S. HRG. 98-1014

CIVIL SERVICE FORMER SPOUSES BENEFITS ACT OF 1984

HEARING

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE, AND GENERAL SERVICES

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 2821

TO AMEND TITLE 5, UNITED STATES CODE, TO IMPROVE PROTECTIONS FOR FORMER SPOUSES OF GOVERNMENT OFFICERS AND EMPLOYEES UNDER THE CIVIL SERVICE RETIREMENT SYSTEM AND THE FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM, AND FOR OTHER PURPOSES

AUGUST 1, 1984

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CONTENTS

Page

Opening statements:
- Senator Stevens 1
- Senator Mathias 2
- Senator Durenberger 3

WITNESSES

WEDNESDAY, AUGUST 1, 1984

James W. Morrison, Jr., Associate Director for Compensation, Office of Personnel Management, accompanied by Claudia Cooley, Deputy Associate Director for Compensation 5
L.J. "Lud" Andolsek, president, National Association of Retired Federal Employees, accompanied by Judy Park, legislative director 22
John P. Sheffey, executive vice president, National Association for Uniformed Services 28
Rosemary T. Mullany, president, Civil Service Spouses for Equity 30
Anne Moss, director, Women's Pension Project, Pension Rights Center 33
Robert M. Beers, congressional liaison officer, American Foreign Service Association 45

ALPHABETICAL LIST OF WITNESSES

Andolsek, L.J.:
- Testimony 22
- Responses to written questions submitted by Senator Mathias 26

Beers, Robert M.: Testimony 45
Cooley, Claudia: Testimony 5
Morrison, James W., Jr.:
- Testimony 5
- Prepared statement 14

Moss, Anne:
- Testimony 33
- Prepared statement 35

Mullany, Rosemary T.: Testimony 30
Park, Judy: Testimony 22
Sheffey, John P.: Testimony 28

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Article entitled "Survivors" by Judy Mann, Washington Post, February 11, 1983, submitted by Senator Durenberger 4
Text of S. 2821 47
Statements submitted by:
- American Federation of Government Employees, AFL–CIO 63
- American Postal Workers Union, AFL–CIO 67
- Fund for Assuring an Independent Retirement 70
- National Association of Letter Carriers 73
- Women's Equity Action League 78

CIVIL SERVICE FORMER SPOUSES BENEFITS ACT OF 1984

WEDNESDAY, AUGUST 1, 1984

U.S. SENATE,
SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE, AND GENERAL SERVICES,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The subcommittee met at 10:05 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ted Stevens (chairman of the subcommittee) presiding.

Present: Senators Stevens and Mathias.

Staff Present: Wayne A. Schley, staff director; Jamie Cowen, special counsel; Jeffrey D. Landry, assistant counsel; Pat Phillips, chief clerk; Sheb Adkisson, minority staff assistant; Eileen Mayer and Debbie Biscieglia, staff of Senator Mathias.

OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. Good morning. Today we are going to be receiving testimony on the Civil Service Former Spouses Benefits Act of 1984, which is cosponsored by Senator Mathias and myself. Generally, this legislation would allow a Federal employee or retiree to elect a reduced annuity and designate a former spouse to receive a survivor annuity.

Under current law, a Federal employee may not make such a designation, nor may a court award a survivor annuity as part of a marital property division. In addition, this legislation would allow a former spouse to participate in the Federal Employees' Health Benefits Program.

In many cases, the spouses of Federal employees remain at home to care for children and maintain a household. When such a marriage is dissolved, many of these homemakers do not qualify for Social Security benefits and very few receive an alimony award. Without the passage of this type of legislation, they will continue to be denied a survivor annuity. We believe that these former spouses deserve this measure of economic justice.

More specifically, this legislation would allow either a Federal employee to voluntarily designate a former spouse to receive a survivor annuity, or a court to order such an award. However, if the employee has been remarried for at least 1 year, the voluntary designation would not be valid unless the current spouse consents to it. Also, a court may not modify a marriage dissolution which has taken place before the effective date of the legislation, nor may the

Office of Personnel Management recognize court orders for survivor benefits issued in connection with dissolutions which occurred before the effective date of this legislation.

Finally, because termination upon remarriage is a characteristic feature of alimony, and not of property division, the survivor annuity would continue even though a former spouse remarries.

In summary, the legislation simply places former spouses on a par with their Foreign Service and Central Intelligence Agency counterparts, who currently receive similar benefits as a result of legislation which we enacted in 1980 and 1982.

My good friend and principal motivator of this legislation, Senator Mathias from Maryland, is here. I yield to him.

OPENING STATEMENT OF SENATOR MATHIAS

Senator MATHIAS. Very briefly, Mr. Chairman, I would like to thank you for the interest and concern you have shown in this legislation, for promptly scheduling hearings on S. 2821, the Civil Service Former Spouses Benefits Act, and finally for working very closely with me and with other interested Members of the Senate on the whole issue of the spousal benefits. The fact that you are moving this legislation so expeditiously is very encouraging to all of us who have been concerned about it.

We are all well aware that present civil service retirement law does not provide adequate or equitable economic protections for former spouses who have participated in their husband's or wive's careers and helped them perform their functions as employees of the Federal Government.

The legislation that Senator Stevens and I have introduced is intended to correct this inadequacy. We look forward to the comments that will be received from witnesses at today's hearing, which will be most helpful in reworking the bill. Nothing is perfect, and certainly the first draft of legislation is far from perfect. This is the opportunity to improve it.

The administration, the House and the Senate have all considered legislation to provide more equitable pension benefits to spouses of Federal employees and retirees. And it is interesting that in all of these proposals, there is a common thread. In fact, there are really two common threads. One is a provision which would require a spouse to provide his or her notarized written consent before the employee can elect to waive survivor benefits. And the second is a provision which permits a State court to award survivor benefits to a former spouse.

Beyond these two common threads, there are areas of disagreement which seem to center around sections which would extend these benefits further. However, recognizing that our first duty is to correct this basic problem, I would encourage all parties to focus attention on the points of agreement, which would be a major step forward, and to use these points as the basis for constructing a comprehensive piece of legislation that everyone can support.

So I look forward, Mr. Chairman, to working very closely with you and hopefully to complete action on this legislation before the end of the 98th Congress.

Senator STEVENS. Thank you very much.

We will put in the record at this point the statement of Senator Durenberger. The statements submitted by other witnesses who were scheduled to appear but could not do so will also be included in this record.

[The statement of Senator Durenberger, with attachment, follows:]

STATEMENT BY SENATOR DAVE DURENBERGER

Mr. Chairman, I want to commend you for holding this hearing today, and I applaud your continuing efforts to provide equity in our civil service system. I would also like to recognize the excellent work of Senator Mathias to eliminate economic discrimination in our public pension program. He has consistently demonstrated his determination to ensure equity for federal employees.

Although a great deal of progress has been made toward providing pension rights for divorced and widowed spouses of nonfederal employees, civil service spouses remain unprotected. Because the courts have not considered civil service pension rights as valid property rights in divorce, many women have found that the retiree walks away from divorce with full retirement benefits and health insurance while she is left with nothing.

Consider the cases of the "too typical" divorced civil service spouse. She was married at age 21 and left the workplace at age 25 to raise her family. At age 40, she found her marriage dissolving and by age 45 was raising her family alone.

Because she was not employed outside the home for 22 years, she quickly found herself with insufficient job training and experience. Although she may receive adequate child support, statistics predict that she will not.

In far too many cases, this woman may find herself reaching retirement age without any pension benefits. She undoubtedly anticipated, at the time of her divorce, that she would be entitled to receive a portion of her husband's civil service pension or, at the very least, Social Security. If she is fortunate and has worked long enough, she may receive some minimal amount of Social Security. In many cases, however, she will not.

As a result of current public pension laws, the civil service benefits she anticipated will not be available to her. Without adequate pension protection, she may soon find herself unable to remain self-sufficient and will be forced to turn to public assistance for support.

This situation is shocking, but it is not unusual. The plight of the displaced homemaker is becoming well-recognized in a society where nearly all marriages end in divorce. Recent statistics revealing the percentage of women and children living in poverty are frightening. Equally startling are the statistics identifying the growing number of elderly women living in poverty.

Congress began to address this issue by amending the Social Security Act in 1977 to provide pension benefits to divorced spouses married ten years or longer. However, even these basic protections were not afforded a significant number of women married to federal employees. For military and civil service employees, their spouses do not automatically receive Social Security—something they often fail to discover until it is too late.

In 1980, Congress enacted legislation to permit divorced spouses of Foreign Service personnel to receive a pro rata share of their former spouse's retirement annuity and survivor's benefits, subject to court review, modification, or rejection.

In 1982, additional legislation was passed to provide similar protection for CIA spouses, Military wives were also the subject of pension rights legislation in 1982.

Unfortunately, these pieces of legislation did not go far enough, and civil service spouses remain outside the scope of any protective pension legislation. Not only are former spouses frequently left without pension rights, but widows of civil service employees may also be ineligible for pension benefits. Current law allows a civil service employee to opt out of survivor's benefits without notification to the spouse or former spouse. As a result, many widows find themselves without retirement income without any notification prior to the employee's death.

The legislation which you are considering today, S. 2821, addresses many of these problems—it permits a federal employee or annuitant to voluntarily elect to provide survivor benefits to any former spouse; it gives State courts the authority to include survivor benefits as part of a divorce decree or property settlement; and it permits a former spouse to enroll in the federal employee health benefit plan as long as he or she pays the full subscription rate.

I have introduced legislation which also deals with the inequities faced by civil service spouses, S. 1930, which is also part of the Economic Equity Act of 1983. I am hopeful that the provisions of my legislation, many of which are similar to S. 2821, will be incorporated in any final legislation reported by your subcommittee.

Like S. 2821, the legislation I have introduced will help correct many of the inequities faced by divorced and widowed spouses of civil service employees. S. 1930 will grant pension protection to these deserving individuals similar to that afforded Foreign Service and CIA spouses. The provisions would:

Entitle women who were married to civil service employees for at least ten years to the right to a pro rata share of the benefits earned during the marriage. This provision is subject to court review and modification, depending on the divorce settlement.

Demand that the courts view pensions as a valid property right.

Mandate survivor's benefits unless the spouse and former spouse choose to waive receipt of such benefits.

Mr. Chairman, I believe this legislation is an effective, equitable and practical way to deal with this serious problem and I hope its provisions will be included in the legislation you are considering today. I further believe the most effective way to address economic discrimination against all women is to pass the entire Economic Equity Act with all its reinforcing provisions.

I recently received a letter from a constituent, 52 years old, crippled with arthritis, with a mentally retarded and handicapped child, which poignantly identifies the urgency for civil service reform:

"We are now in the process of a divorce, and this is where I have a great problem and desperately need some help. I am listed as his beneficiary on a survivor's annuity from the government. But I understand that with the divorce, I will no longer benefit from this plan. To me this is really unfair. The Government Retirement Plan took the place of Social Security so I will not be receiving this. This survivor's annuity plan was supposed to be for my benefit later in life."

I urge your subcommittee to act favorably to correct these injustices in the near future. Society will benefit from these changes.

Mr. Chairman, I ask unanimous consent that an article by Judy Mann which appeared in the February 11, 1983, Washington Post dealing with this problem be included in the hearing record.

Thank you.

[From the Washington Post, Feb. 11, 1983]

SURVIVORS

(By Judy Mann)

Alma Anderson was married 36 years to a former civil service employe, before they were divorced three years ago. In the property settlement, her former husband specifically stated that he wanted her to receive his civil service survivor's benefits. Five months after he remarried, he died, leaving his first wife with an empty promise.

The average widow or widower of a federal annuitant receives $440 a month, according to Linda Itner of the House Post Office and Civil Service Committee. But because the law stipulates that survivors benefits go to the spouse of at least one year, and makes no provision for it to be assigned to a former spouse, Mrs. Anderson, in addition to the second wife, received nothing.

Mrs. Anderson's alimony stopped upon her ex-husband's death and she and her disabled son have been living off her supplemental security income payments of $284.30, his general relief of $214 a month and food stamps. She says she has been able to hold onto her home in Springfield only because Fairfax County gives property tax relief to people over 65 with incomes under $15,000.

"I was to get all the survivors benefits," she says. "I didn't know the federal government wouldn't allow it. It was unbelievable," She says she had not worked since 1941 and was in no way qualified for a self-supporting job.

"I was totally ignorant, I thought divorcing a federal employe would be just like divorcing everyone else."

Florence Foss, of Rockville, was married 14 years and bore three children before she and her husband, a civil service employe, divorced. He then married twice more before his death two years ago. Had he been covered under Social Security, his first wife would have received spousal benefits upon his death, since they had been married at least 10 years. But because he was covered under civil service annuity plans, she received nothing.

Foss, 52, faces years of work before she will be eligible for her own pension benefits. The 14 years she spent making a home and raising children count nothing toward her retirement. "By being unwilling to count the years women worked as homemakers, they're extending the work life of a woman far beyond the work life of a man," she says.

Last summer, Foss, Anderson and a small group of other women who are married to or divorced from civil service employes began meeting to chart a course for changing the way they are treated under the civil service retirement system. Following in the footsteps of Foreign Service, Central Intelligence Agency and military wives, they want to stake a claim to part of their husbands' annuities and to survivors benefits in case of divorce. They also want to remain eligible for group medical coverage and want the law changed so that civil servants can choose to have their survivors benefits go to former spouses as part of divorce settlements.

Military, CIA and Foreign Service couples, whose pension plans are separate from the civil service, can now do that as a result of recent legislation. A congressional subcommittee is just beginning to draft legislation on the matter for the civil service.

Congress and state courts have moved in the past decade toward recognizing marriage as an economic partnership, in which the homemaker has made a contribution. As a result of congressional action over the past four years, pensions of military, CIA, and Foreign Service officers can be divided by state courts as part of property settlements.

Both Foreign Service and CIA employes must now get their spouses' consent before waiving or lowering survivors benefits in favor of larger annuity payments while they are alive. Previously, the government employe could elect not to provide a survivors benefit for his spouse, without ever informing the spouse of the decision. That is still the case with the military.

The federal government is the nation's largest employer, and the civil service, with some 2.7 million employes and a million annuitants, is the last major category of federal employes whose annuity and survivors benefits need to be adjusted so that the spouses' investment in the marital partnership is protected in divorce.

It is a sad commentary on the system that instead of survivors benefits Alma Anderson, age 66, got SSI and food stamps. "It's probably too late for me," she says. "I found out the hard way."

Most of the legislation reforming pensions and survivors benefits has not been retroactive. But if legislation doesn't include retroactivity for women such as Anderson who received survivors benefits in property settlements, it would be an even sadder commentary, indeed.

Senator STEVENS. Our first witness is James W. Morrison, Associate Director for Compensation, Office of Personnel Management. He is accompanied by Claudia Cooley, Deputy Associate Director for Compensation.

Good morning.

TESTIMONY OF JAMES W. MORRISON, JR., ASSOCIATE DIRECTOR FOR COMPENSATION, OFFICE OF PERSONNEL MANAGEMENT, ACCOMPANIED BY CLAUDIA COOLEY, DEPUTY ASSOCIATE DIRECTOR FOR COMPENSATION

Mr. MORRISON. Good morning, Mr. Chairman, Senator Mathias. I am pleased to be with you this morning. I would like to note this is the first opportunity Ms. Cooley has had to appear before this subcommittee. I appreciate very much the chairman's acknowledgement of her.

It is a pleasure to appear before you to discuss S. 2821, the Civil Service Former Spouses Benefits Act of 1984. The Office of Personnel Management agrees with the basic purpose of this bill, and I would like very much to stress that point, and pick up on the points that Senator Mathias mentioned. We would like very much to work with the subcommittee and the staff in ironing out the points of disagreement and focusing on those areas in which we

agree and where we can strengthen this proposal and reach the common objective.

We would like to urge the subcommittee to look at our own Civil Service Retirement Spouse Equity Act which we submitted to Congress on June 11 because we think it also contains several attractive features. But before I mention those, let me just discuss some of the provisions of S. 2821.

S. 2821 would permit a retiring Federal employee, or a former employee entitled to a deferred annuity, to elect to provide a survior annuity for any former spouse to whom the employee was married for at least 1 year while covered under the civil service retirement system. An employee making the election would have his or her retirement benefit reduced in the same way that married retirees currently have their annuities reduced in order to provide survivor benefits for their current spouses.

S. 2821 would also permit a State court to order an employee or former employee to elect to provide a survivor annuity for a former spouse. Any of these elections, whether voluntary or court ordered, could be changed by the retiree at any time. Voluntary elections could be made in cases where the divorce occurred before the bill's enactment, but court-ordered elections could apply only in the case of divorces occurring after enactment.

Survivor annuities could be elected for more than one former spouse of an employee. However, the total of all survivor annuities payable with respect to one employee could not exceed 55 percent of the employee's retirement benefit. Where there are multiple former spouses, survivor annuities would be payable in the order in which elections are received by OPM.

Finally, S. 2821 would provide coverage under the Federal Employees' Health Benefits Program to former spouses who were enrolled in an FEHB plan as family members immediately before their divorces. These former spouses could enroll in any FEHB plan and could transfer to another plan at the same time and under the same conditions as other covered individuals. These former spouses would be required to pay the full cost of their enrollment. This enrollment right would apply to all former spouses, regardless of when their divorces became final.

As I indicated, we do have a number of concerns over the provisions of S. 2821. Many of them are technical points of misunderstanding with respect to drafting. I do not think I need to spend any time detailing those for the subcommittee. Those are areas I think we can probably discuss with staff and see if we cannot reach some agreement or common understanding.

But in addition to some of these technical problems, S. 2821 would make some changes in certain provisions of the current civil service retirement law that we believe are not totally desirable. The bill would amend the law to eliminate the requirement that survivor annuities must terminate if the widow or widower remarries before reaching age 60. This provision has been in the retirement law for many years. Before July 1966, the retirement law required survivor annuities to terminate upon remarriage, regardless of the widow's or widower's age at the time. In 1966, this provision was amended to allow continuation of a survivor annuity if the widow or widower remarried after reaching age 60. This change

was based on the premise that individuals beyond age 60 find it difficult to begin work to offset the loss of their survivor annuity. In most cases, their new spouse will be approximately the same age, perhaps retired or approaching retirement and adjusting to a reduced income. Consequently, the new spouse is unlikely to be able to begin new or additional work to help support a new dependent.

In any event, we should remember that the purpose of survivor benefits is to protect an employee's or retiree's dependents against loss of financial support when the employee or retiree dies. Allowing all survivor annuities to continue until the survivor's death, even in the event of remarriage, would conflict with this principle.

We also note that S. 2821 contains a provision for retroactive entitlement to survivor benefits under certain circumstances. A survivor annuity would automatically be payable to the former spouse of a retiree who died before the effective date, if the retiree was married to the former spouse at the time of retirement and did not waive a survivor annuity, and if the retiree did not remarry after the couple's divorce.

We oppose this retroactive provision. Generally, when the civil service retirement law has been amended to provide new benefits, those changes have applied only to individuals who retired or otherwise met the qualifications for the benefits on or after the effective date. Deviation from this long practice in the case of S. 2821 would not only create significant administrative problems but would also be undesirable in view of the substantial cost of providing these benefits.

The reduction in an employee's annuity from the date of his or her retirement until death pays only about one-third the cost of the survivor annuity. Under S. 2821, in cases where the retiree died before the bill's enactment, the reduction in the retiree's annuity to provide a survivor benefit would have been eliminated at the time of divorce. Thus, in these cases, providing the survivor annuity would be even more expensive than under normal conditions because, for a substantial portion of the employee's retirement, he or she would not have been defraying any part of the cost of the survivor annuity through a reduction in his or her retirement benefit.

We also oppose the extension of coverage under the Federal Employees' Health Benefits Program to former spouses. This provision is not directly related to the purpose of the FEHB Program. Employer-provided health benefits instead are a part of the compensation package we provide in return for an employee's services. Coverage for family members is provided as a benefit for the employees, and not because we have any obligation per se to the family members. We can see no justification to continue this employment benefit after the former spouse's relationship with the employee has been severed. Under S. 2821, there would even be cases in which a former spouse would be entitled to FEHB coverage although the employee's coverage had ceased because he or she had left the Federal service. This could be a precedent for continuing Federal Employees' Health Benefits coverage of employees who leave the Federal service.

We basically believe that extending Federal Employees' Health Benefits coverage to new categories of former dependents of both

current and former employees—indefinitely and without regard to alternative coverage which may be available if the former spouse is employed or remarried—exceeds any reasonable employer responsibility. This extension of coverage would produce significant administrative expenses and difficulties, since we would be required to issue regulations establishing procedures for processing enrollments of former spouses and hold an open enrollment period for former spouses. OPM would have to collect premiums, and assure premiums are paid on a timely basis, and terminate coverage when premium payments are delinquent.

Finally, I would like to turn to OPM's proposed Civil Service Retirement Spouse Equity Act, because we really believe that it contains certain desirable features.

First, our proposal simply provides that OPM will pay survivor annuities to former spouses of employees and retirees, in accordance with court decrees of divorce or annulment or court-approved community property agreements, which is a very concise, clear and straightforward provision, and we think it accomplishes essentially the same thing as S. 2821.

In addition, our proposal would make a technical change in the length-of-marriage requirement for entitlement to survivor benefits. Present law imposes a 1-year requirement for marriages which occur after retirement and in cases involving death in service, but there is no requirement at all where a marriage exists at the time of retirement. Our proposal changes these provisions by establishing a uniform 9-month marriage requirement for entitlement to survivor benefits which would closely resemble the corresponding provision in the Social Security Act.

More important, we believe OPM's proposed bill provides greater protections for the annuity rights of spouses and former spouses than does S. 2821. S. 2821 would prohibit a married retiring employee from waiving survivor benefits without the written consent of the employee's spouse, if the spouse had been married to the employee for at least 1 year at the time of retirement.

OPM's proposal would extend to all current spouses of employees, without qualification, the right to veto the employee's decision not to provide survior benefits. In addition, OPM's proposed bill would prevent a married employee who leaves the Government with title to a deferred annuity from withdrawing his or her contributions from the retirement fund without the written consent of his or her spouse.

Similarly, our proposal would bar payment of a refund to an employee who has a former spouse with future entitlement to a survivor annuity under the terms of a court order. This ensures that no employee will be able to void a spouse's or former spouse's right to survivor benefits by leaving the Government and withdrawing his or her retirement contribution.

So, we would urge the subcommittee to give favorable consideration to the administration's proposal because we believe there are some technical and substantive advantages.

Thank you very much, Mr. Chairman. Ms. Cooley and I will be happy to answer any questions you and Senator Mathias have.

Senator STEVENS. Senator Mathias?

Senator MATHIAS. Thank you, Mr. Chairman. Mr. Morrison, you have been critical of the elimination of the requirement that survivor annuities terminate for any survivor if there is a remarriage before the age of 60. Is that right?

Mr. MORRISON. Yes, sir.

Senator MATHIAS. That suggests, I think, two questions: One, would the elimination of this requirement alleviate any of the administrative problems that OPM currently faces in trying to enforce it?

Mr. MORRISON. Well, in that regard, sir, the elimination of that requirement would probably alleviate some administrative problems we have. We do have substantial problems with any provision which allows people to come on the roll, go off the roll, come on the roll, return to the rolls. So from an administrative perspective alone, S. 2821's provisions might ease the administrative burden. Our objection was more toward the fact that it goes against a principle of not continuing these entitlements during the period of remarriage unless that remarriage occurs after age 60, which is a current provision of law.

Senator MATHIAS. We are working on a general premise or a general theory, as I understand it. As I feel personally, a former spouse has helped make a contribution toward the accumulation of the survivor benefit. It is a kind of lifetime investment. Why does the value of that former spouse's contribution suddenly lose its significance because of remarriage?

Mr. MORRISON. Well, the Senator raises a very good point, sir.

Senator MATHIAS. It is a philosophical question, but it becomes a practical question when it is applied.

Mr. MORRISON. I won't contest the Senator's point with regard to the philosophical point.

Senator STEVENS. What is the actuarial impact, may I ask?

Mr. MORRISON. I don't know that I can give you an actuarial figure now, sir, for stopping and starting that again. We will be happy to look at that and see if there is anything we can provide for the record.

Senator MATHIAS. That will be helpful.

Mr. MORRISON. As to the numbers of people.

Senator MATHIAS. See what the record shows.

Senator STEVENS. It would seem to me there would be a windfall to the fund under your proposal. You would cut off the right to the benefit upon remarriage, but your calculations have to be based upon the marriage not occurring, don't they, unless you factored in some probability of remarriage? I don't think you have. So, I would think there would be a windfall to the fund.

Mr. MORRISON. Our testimony was we were advocating the continuation of current law. Current law requires the termination of an annuity if the spouse remarries before age 60.

Senator STEVENS. That is really my question. Is that factored into any actuarial basis as far as your objection is concerned, or are you just saying we want to object because that is the current law?

Mr. MORRISON. We were saying we know it is costly to provide survivor benefits in any event. Even today we know actuarially that the offset we now have only pays about one-third the cost of

the survivor annuity. So anything that would extend that is, by definition, increasing the cost of survivor annuities.

So our objection is based on a recognition of the cost of providing survivor annuities for longer periods of time than we do under current law. I don't have an actuarial figure as to how much precisely that incremental difference would make.

[Information subsequently supplied for the record follows:]

ACTUARIAL IMPACT OF ELIMINATING REMARRIAGE PROVISION

The provision of current law requiring the termination of spousal survivor benefits if the spouse remarries before age 60 has been taken into account in determining the normal cost and liabilities of the civil service retirement system, and the normal cost and the unfunded liability of the system would increase if this provision were deleted.

The normal cost of the retirement system is currently 36.51 percent of payroll. The elimination of the remarriage provision would increase the normal cost to 36.82 percent of payroll. (The 0.31 percentage difference would be approximately $200 million in 1984, based on the current payroll.) There would also be an immediate increase in the actuarial accrued liability of the retirement system of $2.2 billion if the charge were applied only to remarriages occurring after enactment. If survivor annuities that have previously been terminated due to remarriage were to be resumed, the immediate increase in the accrued actuarial liability would be $5.1 billion.

Senator STEVENS. One last question, Mac. Would you cut off those survivor benefits if there is a dependent?

Mr. MORRISON. We do now, sir, terminate the annuity for the spouse. We don't provide survivor annuities to former spouses at all now. So if the spouse is remarried, that eligibility stops. If there are surviving children entitled to annuity benefits of their own, of course, those benefits are not affected by the remarriage.

Senator MATHIAS. I have just one other question, Mr. Chairman. Mr. Morrison states the position of the agency as not supporting the extension of health coverage to former spouses under the Federal Employees' Health Benefits Plan.

Mr. MORRISON. Yes, sir.

Senator MATHIAS. I can understand that position. Your reservations are practical, and there may be some room for circumscribing this particular provision. It could run away in cost. I understand that. However, I question whether there is a justification for omitting the health benefit provision entirely. Couldn't it be argued that providing affordable, comprehensive health care to former spouses would benefit employees or retirees by reducing the payments that they would be required to make to their former spouses in order to defray urgent, unavoidable medical costs? This is a preventive kind of measure.

Mr. MORRISON. That is certainly one argument that could be made, sir. Under today's provision, we do provide for conversion privileges for spouses if the spouse is enrolled at the time of divorce. So there is no situation today where a person is left totally without health benefits coverage by virtue of a divorce, because the conversion privilege is there without medical examination. Of course, the difference is they will then pay individual rates as opposed to group rates, so the difference is one of premium. The advantage of extending FEHB coverage to former spouses would be to lower their premiums.

In terms of granting coverage, I think we need to make it clear that coverage is available today without a medical examination through the existing conversion provision of the Federal Employees' Health Benefits Program.

Senator MATHIAS. If we are not going to argue about coverage, and I think it is good we grab on all the areas of agreement we can——

Mr. MORRISON [interposing]. Yes, sir.

Senator MATHIAS. Then could we work together to avoid letting this become a Pandora's box, and try to have a limited provision which would be more affordable and reasonable for former spouses?

Mr. MORRISON. We certainly will be willing to work with the committee staff to see what accommodations could be reached on this point. I think for the record I must continue to state the administration's objection to the extension of FEHB coverage in these circumstances because of other reasons as well, and the precedent that it establishes for extending health benefits coverage for people who do not have an employee/employer relationship.

For example, we would not want to provide coverage to the former spouse when the employee himself no longer has health benefits coverage or has left the service. We certainly would be willing to see if there is a way at all to circumscribe that and a way to keep it manageable and keep it at some reasonable cost level. I don't have any suggestions to offer at this moment.

Senator MATHIAS. The coverage that you say is now available is not equal coverage, is it? It is not the same coverage.

Mr. MORRISON. Not necessarily; no, sir. It could be more or less. It is just the right to elect the coverage, so the person is not left without health care coverage.

Senator MATHIAS. It may be either much more expensive or be reduced benefits.

Mr. MORRISON. It could be more expensive or reduced benefits.

Senator MATHIAS. That is the area I think we need to work on. Thank you, Mr. Chairman.

Senator STEVENS. I think we need to work with you and your staff. It does seem to me we have some objectives that are not totally inconsistent with the position you articulate for the administration. We will have to see what we can accomplish in terms of former spouse equity as quickly as possible.

It would seem that where we are relying upon court orders, we have an agreement.

Mr. MORRISON. Yes, sir. General agreement; yes, sir.

Senator STEVENS. And we don't have any disagreement on the rights of the new spouse, right?

Mr. MORRISON. That is right, sir.

Senator STEVENS. We are dealing with the area of former spouses and dependents in a way that seems to me to be very unfortunate, particularly for the dependents.

Mr. MORRISON. Perhaps I should clarify that, under current law, a surviving spouse's remarriage before age 60 results in the termination of survivor benefits to that spouse. If the deceased employee or retiree left any dependent children, their entitlement to survivor benefits is not affected by the spouse's remarriage.

Senator STEVENS. Of course, we are going to a whole new program, and I think we ought to keep that in mind. We will be providing a new retirement system for Federal employees next year, and as we do, we have to recall that we are going to have a whole series of people living under the old program for a substantial period of time. Most former spouses will be dealt with under the old program for a substantial period of time.

Mr. MORRISON. That is correct.

Senator STEVENS. It behooves us to be very careful about what we do because we could find a serious impact as far as the number of people who want to remain under the old program. It might well be that people would opt to go to the new program in order to avoid some decisions we make here. I want to make sure we track this through in the new bill. It is my feeling that there are a substantial number of people who participated in the investment, as Senator Mathias has said. The retirement program has been an investment in the employee contributory plan and, as such, the income of the family, including the spouse, has been reduced during this period in order to make that investment. The new plan will probably be a noncontributory plan in which case there is not that investment.

So we have to be consistent, I think, and fair at the same time as far as former spouses are concerned. I would hope you will work with us along those lines, and that we would assure at least those who may have participated in making the investment that they can share in that investment in years to come. It is not, in my judgment, a gratuity given by the Federal Government. It is not something we are putting out by virture of largess. These people contributed to a plan which had specifics, and they have a right to expect those under normal marital relations.

Unfortunately, we have had a vast increase in later life divorce in this country, and that is what is bringing on this problem. I also think the Senator has mentioned a good problem, the most serious problem. It seems to me the present position of the plan discourages remarriage for people who are in their later years. In all probability, a former spouse will be marrying someone who is about the same age or older. It would be a serious problem if we were to cut off the income of an individual who may wish to marry in later life, and I think we ought not have Federal law which, in effect, discourages marriage and encourages living in sin.

I want to take a good long look at that problem. I think we ought to be encouraging marriage in later life.

Senator MATHIAS. I think the chairman is right, too, in pointing out there have been changes in American society in this respect.

Senator STEVENS. These lifestyle changes may still be considered sinful by some individuals.

Senator MATHIAS. Maybe we could just settle for "irregular."

Mr. MORRISON. As both you and Senator Mathias have stated, Mr. Chairman, there are many, many areas of agreement between the administration's position and the bill, S. 2821. So there are many areas of common objectives and common agreement. We are really talking about areas around the margin, with the possible exception of the health benefit, which is a more substantial area of

disagreement. I think we, as Senator Mathias has stated, need to work closely to see if there is a way of circumscribing that.

Senator STEVENS. We will set a meeting of the subcommittee on September 6 and see if your staff and our staff can work out something we can consider reporting to the full committee that day.

Mr. MORRISON. All right.

Senator STEVENS. Thank you very much.

[The prepared statement of Mr. Morrison follows:]

STATEMENT OF
JAMES W. MORRISON, JR.
ASSOCIATE DIRECTOR FOR COMPENSATION
OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE, AND GENERAL SERVICES
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

at a hearing on

S.2821
THE "CIVIL SERVICE FORMER SPOUSES BENEFITS ACT OF 1984"

AUGUST 1, 1984

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I APPRECIATE THE OPPORTUNITY TO APPEAR THIS MORNING TO DISCUSS S. 2821, THE "CIVIL SERVICE FORMER SPOUSES BENEFITS ACT OF 1984." THE OFFICE OF PERSONNEL MANAGEMENT AGREES WITH THE BASIC PURPOSE OF THIS BILL. HOWEVER, WE URGE THE SUBCOMMITTEE TO CONSIDER OUR OWN "CIVIL SERVICE RETIREMENT SPOUSE EQUITY ACT," WHICH WE SUBMITTED TO CONGRESS ON JUNE 11. THIS PROPOSED BILL CONTAINS SEVERAL ATTRACTIVE FEATURES THAT S. 2821 LACKS. BEFORE EXPLAINING OUR PROPOSAL, HOWEVER, LET ME DISCUSS S. 2821.

S. 2821 WOULD PERMIT A RETIRING FEDERAL EMPLOYEE, OR A FORMER EMPLOYEE ENTITLED TO A DEFERRED ANNUITY, TO ELECT TO PROVIDE A SURVIVOR ANNUITY FOR ANY FORMER SPOUSE TO WHOM THE EMPLOYEE WAS MARRIED FOR AT LEAST ONE YEAR WHILE COVERED UNDER THE CIVIL SERVICE RETIREMENT SYSTEM. AN EMPLOYEE MAKING THE ELECTION WOULD HAVE HIS OR HER RETIREMENT BENEFIT REDUCED IN THE SAME WAY THAT MARRIED RETIREES CURRENTLY HAVE THEIR ANNUITIES REDUCED IN ORDER TO PROVIDE SURVIVOR BENEFITS FOR THEIR

CURRENT SPOUSES. S. 2821 WOULD ALSO PERMIT A STATE COURT TO ORDER AN EMPLOYEE OR FORMER EMPLOYEE TO "ELECT" TO PROVIDE A SURVIVOR ANNUITY FOR A FORMER SPOUSE. ANY OF THESE ELECTIONS, WHETHER VOLUNTARY OR COURT-ORDERED, COULD BE CHANGED BY THE RETIREE AT ANY TIME. VOLUNTARY ELECTIONS COULD BE MADE IN CASES WHERE THE DIVORCE OCCURRED BEFORE THE BILL'S ENACTMENT, BUT COURT-ORDERED ELECTIONS COULD APPLY ONLY IN THE CASE OF DIVORCES OCCURRING AFTER ENACTMENT.

SURVIVOR ANNUITIES COULD BE ELECTED FOR MORE THAN ONE FORMER SPOUSE OF AN EMPLOYEE. HOWEVER, THE TOTAL OF ALL SURVIVOR ANNUITIES PAYABLE WITH RESPECT TO ONE EMPLOYEE COULD NOT EXCEED 55 PERCENT OF THE EMPLOYEE'S RETIREMENT BENEFIT. WHERE THERE ARE MULTIPLE FORMER SPOUSES, SURVIVOR ANNUITIES WOULD BE PAYABLE IN THE ORDER IN WHICH ELECTIONS ARE RECEIVED BY OPM.

FINALLY, S. 2821 WOULD PROVIDE COVERAGE UNDER THE FEDERAL EMPLOYEES' HEALTH BENEFITS (FEHB) PROGRAM TO FORMER SPOUSES WHO WERE ENROLLED IN AN FEHB PLAN AS FAMILY MEMBERS IMMEDIATELY BEFORE THEIR DIVORCES. THESE FORMER SPOUSES COULD ENROLL IN ANY FEHB PLAN AND COULD TRANSFER TO ANOTHER PLAN AT THE SAME TIMES AND UNDER THE SAME CONDITIONS AS OTHER COVERED INDIVIDUALS. THESE FORMER SPOUSES WOULD BE REQUIRED TO PAY THE FULL COST OF THEIR ENROLLMENT. THIS ENROLLMENT RIGHT WOULD APPLY TO ALL FORMER SPOUSES, REGARDLESS OF WHEN THEIR DIVORCES BECAME FINAL.

WE HAVE A NUMBER OF CONCERNS OVER THE PROVISIONS OF S. 2821. THE SURVIVOR ANNUITY PROVISIONS OF THE BILL ARE CONFUSING AND RAISE SOME TECHNICAL PROBLEMS. FOR EXAMPLE, S. 2821 APPEARS TO LIMIT THE RIGHT TO ELECT SURVIVOR BENEFITS FOR A FORMER SPOUSE TO EMPLOYEES AT THE

TIME OF RETIREMENT AND TO FORMER EMPLOYEES WHO RETAIN A RIGHT TO A DEFERRED ANNUITY AT AGE 62. IF THE DIVORCE OCCURRED AFTER RETIREMENT, THE FORMER SPOUSE COULD RECEIVE A SURVIVOR ANNUITY ONLY AS A RESULT OF A COURT ORDER AND NOT BY MEANS OF THE RETIREE'S VOLUNTARY ELECTION. AS ANOTHER EXAMPLE, A COURT COULD ORDER A RETIREE TO "ELECT" A SURVIVOR ANNUITY FOR A FORMER SPOUSE EVEN IF THE FORMER SPOUSE WAS MARRIED TO THE RETIREE AT THE TIME OF RETIREMENT AND HAD AGREED TO WAIVE SURVIVOR BENEFITS AT THAT TIME. IN ADDITION, THERE WOULD BE NO LIMIT ON THE NUMBER OF TIMES AN INDIVIDUAL COULD MODIFY HIS OR HER ELECTION OF SURVIVOR BENEFITS FOR A FORMER SPOUSE. PROCESSING THESE CHANGES COULD BECOME A SIGNIFICANT ADMINISTRATIVE PROBLEM. MOREOVER, IT IS UNCLEAR WHETHER THIS MEANS THE INDIVIDUAL COULD REVOKE THE ELECTION AND RE-ELECT SURVIVOR BENEFITS AN UNLIMITED NUMBER OF TIMES. ALSO, SINCE A COURT ORDER REQUIRING A SURVIVOR ANNUITY FOR A FORMER SPOUSE IS DEEMED TO BE AN EMPLOYEE "ELECTION," IT APPEARS THAT A FORMER EMPLOYEE COULD LATER MODIFY AN "ELECTION" REQUIRED BY A COURT ORDER. EACH OF THESE POINTS WOULD NEED TO BE DEALT WITH IN THE TEXT OF THE BILL.

IN ADDITION TO THESE TECHNICAL PROBLEMS, S. 2821 WOULD MAKE CHANGES IN CERTAIN PROVISIONS OF THE CURRENT CIVIL SERVICE RETIREMENT LAW THAT WE BELIEVE ARE UNDESIRABLE IN SUBSTANCE. THE BILL WOULD AMEND THE LAW TO ELIMINATE THE REQUIREMENT THAT SURVIVOR ANNUITIES MUST TERMINATE IF THE WIDOW OR WIDOWER REMARRIES BEFORE REACHING AGE 60. THIS PROVISION HAS BEEN IN THE RETIREMENT LAW FOR MANY YEARS. BEFORE JULY 1966, THE RETIREMENT LAW REQUIRED SURVIVOR ANNUITIES TO TERMINATE UPON REMARRIAGE, REGARDLESS OF THE WIDOW'S OR WIDOWER'S AGE AT THE TIME. IN 1966 THIS PROVISION WAS AMENDED TO ALLOW CONTINUATION OF A SURVIVOR ANNUITY IF THE WIDOW OR WIDOWER REMARRIED AFTER REACHING AGE 60. THIS CHANGE WAS BASED

ON THE PREMISE THAT INDIVIDUALS BEYOND AGE 60 FIND IT DIFFICULT TO BEGIN WORK TO OFFSET THE LOSS OF THEIR SURVIVOR ANNUITY. IN MOST CASES, THEIR NEW SPOUSE WILL BE APPROXIMATELY THE SAME AGE, PERHAPS RETIRED OR APPROACHING RETIREMENT, AND ADJUSTING TO A REDUCED INCOME. CONSEQUENTLY, THE NEW SPOUSE IS UNLIKELY TO BE ABLE TO BEGIN NEW OR ADDITIONAL WORK TO HELP SUPPORT A NEW DEPENDENT. IN ANY EVENT, WE SHOULD REMEMBER THAT THE PURPOSE OF SURVIVOR BENEFITS IS TO PROTECT AN EMPLOYEE'S OR RETIREE'S DEPENDENTS AGAINST LOSS OF FINANCIAL SUPPORT WHEN THE EMPLOYEE OR RETIREE DIES. ALLOWING ALL SURVIVOR ANNUITIES TO CONTINUE UNTIL THE SURVIVOR'S DEATH, EVEN IN THE EVENT OF REMARRIAGE, WOULD CONFLICT WITH THIS PRINCIPLE.

S. 2821 WOULD ALSO AMEND THE PROVISION OF LAW THAT CURRENTLY REQUIRES OPM TO COMPLY WITH COURT ORDERS APPORTIONING AN EMPLOYEE'S RETIREMENT BENEFITS BETWEEN THE EMPLOYEE AND HIS OR HER FORMER SPOUSE. WE DO NOT UNDERSTAND THE PURPOSE OF THIS PROPOSED REVISION, WHICH APPEARS TO LIMIT OPM'S ABILITY TO COMPLY WITH COURT ORDERS TO THOSE CASES IN WHICH THE EMPLOYEE OR RETIREE IS NAMED BY THE COURT AS THE PAYOR. THE PROPOSED AMENDMENT DOES NOT PROVIDE FOR COURT DECREES WHICH ORDER OPM OR THE FEDERAL GOVERNMENT TO PAY A PORTION OF A RETIREE'S ANNUITY DIRECTLY TO A FORMER SPOUSE.

WE ALSO NOTE THAT S. 2821 CONTAINS A PROVISION FOR RETROACTIVE ENTITLEMENT TO SURVIVOR BENEFITS UNDER CERTAIN CIRCUMSTANCES. A SURVIVOR ANNUITY WOULD AUTOMATICALLY BE PAYABLE TO THE FORMER SPOUSE OF A RETIREE WHO DIED BEFORE THE EFFECTIVE DATE, IF THE RETIREE WAS MARRIED TO THE FORMER SPOUSE AT THE TIME OF RETIREMENT AND DID NOT WAIVE A SURVIVOR ANNUITY, AND IF THE RETIREE DID NOT REMARRY AFTER THE COUPLE'S DIVORCE.

WE OPPOSE THIS RETROACTIVE PROVISION. GENERALLY, WHEN THE CIVIL SERVICE RETIREMENT LAW HAS BEEN AMENDED TO PROVIDE NEW BENEFITS, THOSE CHANGES HAVE APPLIED ONLY TO INDIVIDUALS WHO RETIRED OR OTHERWISE MET THE QUALIFICATIONS FOR THE BENEFITS ON OR AFTER THE EFFECTIVE DATE. DEVIATION FROM THIS LONG PRACTICE IN THE CASE OF S. 2821 WOULD NOT ONLY CREATE SIGNIFICANT ADMINISTRATIVE PROBLEMS BUT WOULD ALSO BE UNDESIRABLE IN VIEW OF THE SUBSTANTIAL COST OF PROVIDING THESE BENEFITS. THE REDUCTION IN AN EMPLOYEE'S ANNUITY FROM THE DATE OF HIS OR HER RETIREMENT UNTIL DEATH PAYS ONLY ABOUT ONE-THIRD THE COST OF THE SURVIVOR ANNUITY. UNDER S. 2821, IN CASES WHERE THE RETIREE DIED BEFORE THE BILL'S ENACTMENT, THE REDUCTION IN THE RETIREE'S ANNUITY TO PROVIDE A SURVIVOR BENEFIT WOULD HAVE BEEN ELIMINATED AT THE TIME OF DIVORCE. THUS, IN THESE CASES, PROVIDING THE SURVIVOR ANNUITY WOULD BE EVEN MORE EXPENSIVE THAN UNDER NORMAL CONDITIONS BECAUSE, FOR A SUBSTANTIAL PORTION OF THE EMPLOYEE'S RETIREMENT, HE OR SHE WOULD NOT HAVE BEEN DEFRAYING ANY PART OF THE COST OF THE SURVIVOR ANNUITY THROUGH A REDUCTION IN HIS OR HER RETIREMENT BENEFIT.

WE ALSO OPPOSE THE EXTENSION OF COVERAGE UNDER THE FEDERAL EMPLOYEES' HEALTH BENEFITS (FEHB) PROGRAM TO FORMER SPOUSES. THIS PROVISION IS NOT DIRECTLY RELATED TO THE PURPOSE OF THE FEHB PROGRAM. EMPLOYER-PROVIDED HEALTH BENEFITS INSTEAD ARE A PART OF THE COMPENSATION PACKAGE WE PROVIDE IN RETURN FOR AN EMPLOYEE'S SERVICES. COVERAGE FOR FAMILY MEMBERS IS PROVIDED AS A BENEFIT FOR THE EMPLOYEES, AND NOT BECAUSE WE HAVE ANY OBLIGATION PER SE TO THE FAMILY MEMBERS. WE CAN SEE NO JUSTIFICATION WHATSOEVER TO CONTINUE THIS EMPLOYMENT BENEFIT AFTER THE FORMER SPOUSE'S RELATIONSHIP TO THE EMPLOYEE HAS BEEN SEVERED. UNDER S. 2821, THERE

WOULD EVEN BE CASES IN WHICH A FORMER SPOUSE WOULD BE ENTITLED TO FEHB COVERAGE ALTHOUGH THE EMPLOYEE'S COVERAGE HAD CEASED BECAUSE HE OR SHE HAD LEFT THE FEDERAL SERVICE. THIS COULD BE A PRECEDENT FOR CONTINUING FEHB COVERAGE OF EMPLOYEES WHO LEAVE THE FEDERAL SERVICE.

EXTENDING FEHB COVERAGE TO NEW CATEGORIES OF FORMER DEPENDENTS OF BOTH CURRENT AND FORMER EMPLOYEES--INDEFINITELY AND WITHOUT REGARD TO ALTERNATIVE COVERAGE WHICH MAY BE AVAILABLE IF THE FORMER SPOUSE IS EMPLOYED OR REMARRIED--EXCEEDS ANY REASONABLE EMPLOYER RESPONSIBILITY. MOREOVER, IT SHOULD NOT BE ASSUMED THAT THIS EXTENSION OF COVERAGE WOULD COST THE GOVERNMENT NOTHING, MERELY BECAUSE THE FORMER SPOUSE WOULD PAY THE FULL PREMIUM. THIS COVERAGE EXTENSION COULD ADVERSELY AFFECT THE PREMIUMS THAT THE GOVERNMENT AND OTHER FEHB ENROLLEES PAY, IF THE CLAIMS EXPERIENCE OF THOSE FORMER SPOUSES CHOOSING TO ENROLL IN THE PROGRAM PROVES TO BE HIGH.

MOREOVER, THIS EXTENSION OF COVERAGE WOULD PRODUCE SIGNIFICANT ADMINISTRATIVE EXPENSES AND DIFFICULTIES. OPM WOULD BE REQUIRED TO ISSUE REGULATIONS ESTABLISHING PROCEDURES FOR PROCESSING ENROLLMENTS OF FORMER SPOUSES AND HOLD AN OPEN ENROLLMENT PERIOD FOR FORMER SPOUSES. OPM WOULD HAVE TO VERIFY THAT THE FORMER SPOUSE WAS ENROLLED IN FEHB AS A FAMILY MEMBER IMMEDIATELY BEFORE THE DIVORCE AND THAT THE FORMER SPOUSE WAS MARRIED TO THE EMPLOYEE FOR AT LEAST ONE YEAR DURING WHICH THE EMPLOYEE WAS UNDER THE CIVIL SERVICE RETIREMENT SYSTEM. WE WOULD BE REQUIRED TO BILL EACH FORMER SPOUSE FOR THE COMBINED EMPLOYEE AND AGENCY SHARES OF THE PLAN'S PREMIUMS, COLLECT THE PREMIUMS, ENSURE THAT PREMIUMS ARE PAID ON A TIMELY BASIS, AND TERMINATE COVERAGE WHEN PREMIUM PAYMENTS ARE DELINQUENT. FINALLY, OPM REGULATIONS WOULD ALSO HAVE TO PROVIDE FOR NOTIFYING FORMER SPOUSES OF THEIR RIGHT TO ELECT FEHB COVERAGE.

THESE TASKS WOULD BE VERY DIFFICULT FOR OPM TO CARRY OUT, SINCE WE HAVE NO RECORDS THAT WOULD ENABLE US TO MAKE SUCH DETERMINATIONS. THE NAMES OF INDIVIDUAL FEHB ENROLLEES (OTHER THAN CIVIL SERVICE ANNUITANTS AND THE EMPLOYEES OF OPM ITSELF) AND COVERED DEPENDENTS ARE NOT MAINTAINED BY OPM. THEY ARE INSTEAD KNOWN ONLY BY THE EMPLOYING AGENCY AND THE CARRIERS OF THE FEHB PLAN OR, IN THE CASE OF MANY DEPENDENTS, NOT EVEN BY THE AGENCIES OR THE CARRIERS. THIS LACK OF INFORMATION IS A FORMIDABLE OBSTACLE TO EXTENDING FEHB COVERAGE TO FORMER SPOUSES.

I WOULD NOW LIKE TO TURN TO OPM'S PROPOSED "CIVIL SERVICE RETIREMENT SPOUSE EQUITY ACT," WHICH WE BELIEVE CONTAINS CERTAIN DESIRABLE FEATURES THAT S. 2821 LACKS, WHILE AVOIDING CERTAIN DEFECTS OF S. 2821. FIRST, OUR PROPOSAL SIMPLY PROVIDES THAT OPM WILL PAY SURVIVOR ANNUITIES TO FORMER SPOUSES OF EMPLOYEES AND RETIREES, IN ACCORDANCE WITH COURT DECREES OF DIVORCE OR ANNULMENT OR COURT-APPROVED COMMUNITY PROPERTY AGREEMENTS. THIS PROVISION IS MUCH MORE CONCISE, CLEAR, AND STRAIGHTFORWARD THAN THE CORRESPONDING PROVISIONS OF S. 2821, AND IT ACCOMPLISHES ESSENTIALLY THE SAME THING. OUR PROPOSAL AVOIDS THE CONFUSION IN S. 2821 OVER VOLUNTARY VERSUS INVOLUNTARY "ELECTIONS" AND THE RIGHT TO MODIFY ELECTIONS.

IN ADDITION, OUR PROPOSAL WOULD MAKE A TECHNICAL CHANGE IN THE LENGTH-OF-MARRIAGE REQUIREMENT FOR ENTITLEMENT TO SURVIVOR BENEFITS. PRESENT LAW IMPOSES A ONE-YEAR REQUIREMENT FOR MARRIAGES WHICH OCCUR AFTER RETIREMENT AND IN CASES INVOLVING DEATH IN SERVICE, BUT THERE IS NO REQUIREMENT AT ALL WHERE A MARRIAGE EXISTS AT THE TIME OF RETIREMENT. OUR PROPOSAL WOULD CHANGE THESE PROVISIONS BY ESTABLISHING A UNIFORM 9-MONTH LENGTH-OF-MARRIAGE REQUIREMENT FOR ENTITLEMENT TO SURVIVOR BENEFITS, CLOSELY RESEMBLING THE CORRESPONDING PROVISION OF THE SOCIAL SECURITY ACT.

WE BELIEVE S. 2821'S LENGTH-OF-MARRIAGE REQUIREMENT (ONE YEAR DURING CSR-COVERED SERVICE) IS UNREASONABLY RESTRICTIVE AND WOULD BE MORE DIFFICULT TO ADMINISTER THAN A SIMPLE 9-MONTH REQUIREMENT FOR ALL SURVIVORS.

MORE IMPORTANT, OPM'S PROPOSED BILL PROVIDES GREATER PROTECTION OF THE ANNUITY RIGHTS OF SPOUSES AND FORMER SPOUSES THAN DOES S. 2821. S. 2821 WOULD PROHIBIT A MARRIED RETIRING EMPLOYEE FROM WAIVING SURVIVOR BENEFITS WITHOUT THE WRITTEN CONSENT OF THE EMPLOYEE'S SPOUSE, IF THE SPOUSE HAD BEEN MARRIED TO THE EMPLOYEE FOR AT LEAST ONE YEAR AT THE TIME OF RETIREMENT. OPM'S PROPOSAL WOULD EXTEND TO ALL CURRENT SPOUSES OF EMPLOYEES--WITHOUT QUALIFICATION--THE RIGHT TO VETO THE EMPLOYEE'S DECISION NOT TO PROVIDE SURVIVOR BENEFITS. IN ADDITION, OPM'S PROPOSED BILL WOULD PREVENT A MARRIED EMPLOYEE WHO LEAVES THE GOVERNMENT WITH TITLE TO A DEFERRED ANNUITY FROM WITHDRAWING HIS OR HER CONTRIBUTIONS FROM THE RETIREMENT FUND WITHOUT THE WRITTEN CONSENT OF HIS OR HER SPOUSE. SIMILARLY, OUR PROPOSAL WOULD BAR PAYMENT OF A REFUND TO AN EMPLOYEE WHO HAS A FORMER SPOUSE WITH FUTURE ENTITLEMENT TO A SURVIVOR ANNUITY UNDER THE TERMS OF A COURT ORDER. THIS ENSURES THAT NO EMPLOYEE WILL BE ABLE TO VOID A SPOUSE'S OR FORMER SPOUSE'S RIGHT TO SURVIVOR BENEFITS BY LEAVING THE GOVERNMENT AND WITHDRAWING HIS OR HER RETIREMENT CONTRIBUTIONS. WE NOTE THAT S. 2821 DOES NOT CONTAIN ANY SIMILAR SAFEGUARDS. FINALLY, UNLIKE S. 2821, OUR PROPOSAL CLEARLY PROVIDES FOR SURVIVOR ANNUITIES FOR FORMER SPOUSES, SUBJECT TO A COURT ORDER, IN CASES WHERE THE EMPLOYEE DIES BEFORE RETIRING. S. 2821 WOULD PROVIDE NO SURVIVOR BENEFITS TO FORMER SPOUSES IN THESE CIRCUMSTANCES.

BECAUSE OF THESE DIFFERENCES, WE FAVOR ENACTMENT OF OPM'S PROPOSED "CIVIL SERVICE RETIREMENT SPOUSE EQUITY ACT," RATHER THAN S. 2821.

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WE HOPE THAT THE SUBSTANTIVE AND TECHNICAL ADVANTAGES OF OUR PROPOSAL WILL LEAD YOU TO GIVE IT FAVORABLE CONSIDERATION.

THANK YOU VERY MUCH FOR THIS OPPORTUNITY TO DISCUSS THESE PROPOSALS. I WOULD BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Senator STEVENS. Mr. Andolsek, accompanied by Judy Park. Good morning, sir.

TESTIMONY OF L. J. "LUD" ANDOLSEK, PRESIDENT, NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES, ACCOMPANIED BY JUDY PARK, LEGISLATIVE DIRECTOR

Mr. ANDOLSEK. Good morning, Mr. Chairman. It is a pleasure for me to appear again before your subcommittee. As a resident of Maryland, Mr. Mathias, it is a pleasure to appear before you. You are my Senator. I remember your friendliness when you were a Congressman. I worked for John Blatnik on the other side of the Capitol.

I am "Lud" Andolsek, president of the National Association of Retired Federal Employees, commonly referred to as NARFE. I have with me our excellent legislative director, Judy Park. On behalf of our 500,000 dues-paying members, I commend you, Mr. Chairman, for holding this hearing today and for focusing attention on the survivor benefits feature of the civil service retirement program.

We have heard the wild claims in recent years about so-called overgenerous Federal retirement benefits, but the tall tales of critics pale in the shadow of the sad tale of the actual survivor annuitants whose average annuity is $467 a month, plus or minus. Even that sad tale, however, is eclipsed by the tragic tale of individuals whose wage earning spouses worked for the Federal Government, but who, for one reason or another, will unexpectedly not be entitled to survivor benefits under the civil service retirement system.

I welcome the opportunity to work with this subcommittee to determine what can and should be done to provide for both current and former spouses who may face the loss of expected retirement income.

We have reviewed S. 2821 and feel it is an important step toward recognizing that retirement benefits are, indeed, property. NARFE is currently in court in an effort to clarify the property nature of this deferred compensation. Any action by this subcommittee which helps to clarify this point is appreciated.

As a result of recent social trends, marriage has come to be recognized as an economic as well as a personal partnership. Since retirement benefits, including survivor benefits, are indeed property, we believe they are suitable for assignment by courts in property settlements arising from divorce.

NARFE supports the approach taken by S. 2821 to deal with this issue. In addition to authorizing OPM to comply with future court-

ordered settlements, it allows Federal workers to voluntarily provide survivor benefits to a former spouse.

We are pleased to note that in doing so, the bill protects the interests of current spouses. It is very important to ensure, as this bill does, that providing retirement security to one group of disenfranchised individuals does not create problems for another group; namely, current spouses.

Additionally, by establishing a joint waiver requirement for survivor benefits, S. 2821 insures that spouses of future retirees will not be faced with unexpected loss of benefits upon the retiree's death. While we support the joint waiver, we recommend that some exceptions be allowed. Since the failure of a spouse to waive survivor benefits guarantees that they will be provided, this amounts to veto power over a retiring worker's nonselection of the benefit.

Undoubtedly, there will be instances where couples are estranged, yet not divorced. We do not think it is sound policy to require reductions in the annuities of retiring workers by giving an estranged spouse, who may harbor bitter feelings after years of separation and financial independence, absolute power to reduce the worker's retirement benefit.

In effect, this places an insurmountable burden on workers who are abandoned by a spouse, but for religious or other reasons, never obtained a legal divorce. Therefore, we recommend that an exception on joint waiver requirement be allowed in cases where it is convincingly demonstrated that neither a shared household nor other evidence of financial interrelationship or commitment exists.

Section 7 of S. 2821 allows divorced spouses to participate in the Federal Employees' Health Benefits Program. We think this provision to be fair and deserving of our full support. Termination of marriage does not terminate the need for individuals to obtain adequate health insurance at affordable prices. Some individuals may even have difficulty obtaining health insurance in the open market. So we see no reason why divorced spouses should not be allowed to continue participation in the Government's group health insurance program by paying the entire premium cost.

By utilizing the joint waiver for future retirees and voluntary coverage for individuals already divorced, S. 2821 establishes procedures to avoid future tragedies and reasonably deal with problems created by past policies. There is a problem currently incubating, however, which NARFE strongly feels this legislation should address very strongly.

Under current law, a married Federal employee can only make election for survivor benefits at the time of retirement. Persons not married at the time of retirement who enter into a postretirement marriage have 1 year from the date of marriage to elect this very important benefit. Once this survivor decision is made by the retiring employee or the newly married annuitant, it cannot be changed.

At the present time, married Federal employees are automatically assumed to desire survivor benefits for their spouses and the accompanying reduction is made to provide such, unless the individual specifies in writing that he or she does not wish to have the deduction made to provide for the survivor. This, however, has not always been the case. As a result, our organization has heard from

many members who inadvertently did not elect survivor benefits as well as some who were actually misinformed about the immediate action needed to provide for their spouses. These individuals fervently desire a postretirement opportunity to provide adequate survivor benefits, and they are willing to pay for this privilege.

We have also been alerted to situations where individuals were married at the time of their retirement, but did not elect survivor benefits because circumstances at that time made such a choice futile. For instance, we received a letter from an annuitant who retired in May 1973. His retirement at that time was prompted by a need for him to care for a terminally ill wife who died 2 months after the man's retirement. Since his wife's death was imminent at the time of his retirement, this individual did not elect a survivor benefit. Several years later, he remarried. Because this individual was married at the time of his retirement and did not make a survivor election at that time, he has never been able to elect survivor benefits for his second wife. This individual desperately wants to provide for his current spouse who, by the way, lost her Social Security benefits when she married him, but current law prevents him from doing so.

There is no need to specify the many varied circumstances which justify enactment of legislation to provide retirees with a second opportunity to revise their original survivor elections. In the majority of instances, however, a revision of this election is justifiably warranted.

Senator STEVENS. I understand OPM to say they agree with you there as long as the second marriage lasted for 9 months.

Mr. ANDOLSEK. I don't see why it should not be right away.

Recent statistics indicate that 37 percent of retirees currently on the rolls have not elected survivor benefits. While many of these are obviously single individuals who specifically did not and do not have a need to provide benefits to another individual, we know that many of them would welcome an opportunity to provide benefits for survivors and would be willing to pay the price.

With minor changes, the legislation before this subcommittee could be amended to address this situation. Section 2 of S. 2821 permits individuals to voluntarily elect a reduced annuity in order to provide survivor benefits to a former spouse. NARFE recommends that this provision be expanded to include current spouses.

Indeed, we fear that unless this change is made, a marriage disincentive will be created. Married retirees wishing to revise their survivor benefit decision will have one route available to them under the present bill as drafted. Unfortunately, that route would require divorce.

We think the goals of S. 2821 preventing future tragedies and permitting individuals to voluntarily provide for spouses they divorced in the past are worthy and achievable. But they are every bit as important to individuals who are married as to those who are divorced.

In closing, Mr. Chairman, I would like to go back to those who criticize the retirement system as overly generous. Our system is large, covering 4 million workers and retirees; it is diverse, providing retirement in dignity and security to janitors and Senators alike. There will be a continuing need to keep the system fair and

compassionate as we are trying to do today. There will also be a continuing tendency for critics to attack it using half-truths and extreme examples.

The point they fail to consider is this: A retirement system is somewhat like a nation, it should not be judged solely on how it rewards its most successful and influential elements; rather, does it fairly treat the average worker who toils by the book, observes the rules, and earns the right to retire with dignity and security? We should all be proud in the civil service retirement system.

Mr. Chairman, Senator Mathias, I view our society like a family. As a family, we have an opportunity to train our young to become productive members of the family, but that responsibility is equally an obligation to show compassion and concern for those who have contributed in the past. We should not prohibit our retirees from providing security for our loved ones. The private sector followed us on many of the other personnel policies we have established for workers. Please look at this carefully and follow us again because this Nation should be able to provide for elderly citizens, whether they be Federal Government employees, or private employees. Believe me, we are all human beings and there is no difference between Government employees and others. People can retire in the sunset years of their lives with some dignity and some respect.

I appreciate the opportunity to appear before this committee and will be pleased to answer any questions you may have. If I can't do it, Judy will.

Senator MATHIAS. Mr. Chairman, I have several questions I would like Mr. Andolsek's views on, but in order to conserve time, if it is agreeable with you, I will submit those in writing and ask that they be answered for the record.

Senator STEVENS. Thank you very much. We will submit questions to you. We would appreciate it if you would confer with the staff on your suggestions. We do look forward to reporting a bill from this subcommittee to the full committee in September.

Mr. ANDOLSEK. We will be happy to do that, to work with the staff.

[Responses to written questions submitted by Senator Mathias follow:]

National Association of Retired Federal Employees Responses to Questions Submitted by Senator Mathias

Q. You bring up a very good point about the joint waiver provision. Your recommendation is that an exception to the joint waiver requirement be allowed in cases where the employee and his spouse are estranged. Do you see potential problems in enforcing this exception?

A. The obvious difficulty will occur when disputes must be adjudicated. Even if the burden of proof is squarely placed on the retiring employee, disputed cases ultimately must be decided by some governmental entity.

We recommend establishing very clear criteria to demonstrate the absence of any financial interrelationship, as well as an opportunity for rebuttal by an estranged spouse. The administrative decision should, of course, be subject to court review.

This may appear to be a cumbersome process; however, we feel some avenue of relief from the veto power must be left open for extenuating circumstances. Although it will probably apply in very few cases, it will serve to prevent gross inequities.

Q. As you may have noted, the Administration has proposed a uniform 9-month marriage requirement for entitlement to survivor benefits. Would this provision take care of your concern about "second chance" legislation, at least prospectively? To illustrate, if there were to be a 9-month marriage requirement before survivor benefits could be elected to provide for a spouse, and the notification period for requesting such a survivor annuity remains at one year, there would be a 3-month period in which the retiree could make the election. Does this help to alleviate the problem that you see?

A. The Administration's 9-month marriage requirement would help to prospectively eliminate some confusion which has existed when remarriages have occurred after retirement. The confusion is caused by the fact that entitlement to the benefit doesn't occur until a marriage has existed for a year, but application for the benefit must occur before the marriage is one year old. Either shortening the entitlement requirement <u>or</u> lengthening the application period will help in this area.

There are two problem areas left unaddressed by this plan, however. Under a scenario we detailed in our testimony, individuals who are married at the time of retirement but do not select survivor benefits are forever prohibited from providing those benefits to a subsequent spouse. In the example we used, a retiring worker with a terminally ill spouse made the sensible decision not to select survivor benefits. The spouse died, the annuitant remarried several years later. However, because the individual was married at the time of retirement and did

not select the benefit, he was precluded from having an opportunity to provide the survivor benefit for the subsequent spouse.

The simplest way we see to deal with this problem is to allow any reported change in the marital status of retirees -- divorce, legal separation, marriage or remarriage -- to open a voluntary second-election window.

The other obvious area not addressed in the Administration's proposal is how to fairly deal with the problems of retirees who have become unintended victims of the confusion or existing restrictions. The joint-waiver provision and delinking the entitlement and application deadline for those who remarry will deal with much of this prospectively. But the plight of people who have remained married and desperately desire a second chance to select this protection for their spouses remains a paramount concern.

Therefore, NARFE strongly urges that all individuals who are or will retire before the joint waiver is implemented be provided with a second opportunity to voluntarily select survivor benefits.

Q. Your prepared statement supports the provisions of S. 2821 extending FEHB coverage availability to ex-spouses. However, I am sure that you are aware of the concerns expressed in this regard by the Office of Personnel Management. It is my opinion that such a provision, far from violating the employer-employee relationship as Mr. Morrison has suggested, will promote that purpose by relieving the employee of a substantial burden with respect to the health insurance needs of an ex-spouse. Viewed in this light, it is really no different than extending coverage to a present spouse or other dependents. Do you have any comment on this?

A. Because it is an administrative agency of the Executive Branch, we should expect OPM to be concerned about the administrative burden associated with various program changes. The concern with administrative difficulty or philosophical arguments about an attenuated nexus are far outweighed in our opinion by the great need of individuals for adequate health coverage at affordable prices.

During my appearance before the Subcommittee, I likened all of us who have, do, or will perform the valuable services demanded by the public as a family. Even when a family member leaves the fold, some of the vital support lifelines should remain open. Allowing access to group rates under the FEHBP to divorced spouses will cost the government little, if anything; but it carries inestimable value to individuals who may otherwise be unable to obtain coverage.

Senator STEVENS. The next witness is John P. Sheffey, executive vice president, National Association for Uniformed Services.

TESTIMONY OF JOHN P. SHEFFEY, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION FOR UNIFORMED SERVICES

Mr. SHEFFEY. It is a pleasure to be before you again.

The National Association for Uniformed Services, NAUS, which represents a large number of former uniformed services personnel now working in or retired from Federal civilian employment, appreciates this opportunity to testify on S. 2821.

I would also like to take this opportunity to thank Chairman Stevens and the subcommittee for their recent support of the repeal of the Public Law 97-253 provision requiring offset of civil service pay by the amount of military retired pay cost-of-living adjustments. The repeal provision was in H.R. 4170, the Tax Reform Act, which became Public Law 98-369 on July 18, 1984. I realize you are personally behind that, sir, and we appreciate that.

Senator STEVENS. Thank you very much.

Mr. SHEFFEY. NAUS supports the goals of S. 2821. The bill would bring provisions for divorced civil service spouses more in line with those of the uniformed services in Public Law 97-252, and those of the Pension Equity Act passed earlier this year for the private sector. However, the following revisions to S. 2821 are recommended for your consideration:

Section 2(o)(5) would permit an employee, member, or former employee or member to elect a survivor annuity for a former spouse without the concurrence of a current spouse if the new marriage has not been in effect for at least 1 year. There is no apparent reason for the 1-year marriage requirement, and current spouses' interests are the same regardless of length of marriage. I recommend the 1-year condition be deleted, thus requiring the written agreements of current spouses in all cases.

S. 2821 permits a surviving spouse other than one married after the member's retirement to receive both a spousal benefit and a full Federal annuity if the surviving spouse was also a Federal employee. Such an individual would receive two federally subsidized annuities while a second spouse who married the member after retirement would be allowed only one.

In addition, a second spouse who is not also a Federal employee would receive a reduced survivor annuity in most cases, and in some cases, none at all. For those penalized because the marriage took place after retirement, the proposed restriction is doubly unjust because the member pays for a survivor benefit after retirement, not before.

There is no apparent reason for the discrimination against the spouse married after retirement. This could be the member's only marriage. Because of the ages of the people involved, survivor protection for the spouse is all the more important.

I urge that there be no discrimination against postretirement marriages and no linkage between separate annuity rights. As desirable as this may appear from a cost viewpoint, great injustices are certain to result. Let the courts take the various retirement rights into consideration in ordering survivor benefits in divorce

cases. Every case is different. This recommendation is not intended to foreclose a future linkage of annuities with Social Security in a new civil service retirement system. That will introduce a new set of problems.

Senator STEVENS. We don't read the bill that way. We will be happy to confer with you. We agree with what your goal is, but we have to make sure it cannot be interpreted the way you have.

Mr. SHEFFEY. I will contact your staff and see where I misinterpreted it. Thank you.

NAUS supports S. 2821's authorization for previously divorced annuitants voluntarily to elect survivor benefits for their former spouses. We thoroughly approve the accompanying prohibition on ex post facto court orders for survivor benefits in divorce cases finalized before S. 2821 becomes law (section 9(b)). H.R. 2300, currently before the House Committee on Post Office and Civil Service, has no such prohibition. H.R. 2300 would permit a new court order to be issued long after the divorce was final, ordering the employee or annuitant to accept a reduced annuity to provide a survivor annuity for a divorced spouse. Divorce settlements today are nearly all negotiated under no-fault laws and agreements reached on the basis of laws and circumstances existing at the time of the divorce. To change the rules years later and then apply them ex post facto to prior divorces would be fundamentally unfair and a betrayal of the Federal employee by his Government. Such employees have the right to expect that divorce agreements entered into years ago are final, and that their personal financial plans made in good faith on the basis of such agreements will not later be abrogated.

If this difference must eventually be resolved in conference committee, I hope that the Senate conferees will insist upon the S. 2821 version.

Most of the divorced spouse legislative proposals submitted to the Congress have focused solely on the older, abandoned wife who often truly deserves to share in her former husband's benefits. This tunnel vision, however, has largely ignored the interests of female career employees. The first group is organized and vocal, and its plight invites sympathy. The latter two groups are not organized, and most of the individuals who would be affected are not even aware of the proposals. Therefore, this committee should give considerable weight to the limited testimony it receives on their behalf.

The issue of divorced spouses rights to an employee's retirement and survivor benefits simply does not have a legislative solution that would be consistently fair to all parties. It is a matter that the Federal Government should leave to the States to the maximum extent possible. I urge that your objective be only to insure that Federal employees in each State are subject to the same laws that apply to all other citizens. I believe the recommendations that I have made for S. 2821 are consistent with the principle.

If I may, I would like to add an observation in response to Senator Mathias' question to Mr. Morrison. That is, military widows' survivor benefits terminate with remarriage prior to age 60 and so do the Social Security widows' benefits. The change in S. 2821 could be a very expensive precedent.

Senator STEVENS. We have a difficult problem. We would appreciate your consulting with our staff. We are trying to make certain we have a bill that fulfills our responsibility to current spouses. After all, in many cases, that could disrupt the employee relationship with the employer. We have a responsibility to both the employee and the current spouse.

We appreciate your help in that regard.

Mr. SHEFFEY. Thank you, sir.

Senator STEVENS. We turn to Rosemary Mullany, president of the Civil Service Spouses for Equity.

TESTIMONY OF ROSEMARY T. MULLANY, PRESIDENT, CIVIL SERVICE SPOUSES FOR EQUITY

Ms. MULLANY. Good morning, Chairman Stevens. Thank you for the opportunity to represent Civil Service Spouses for Equity before your committee today as you consider S. 2821, the Civil Service Former Spouses Benefits Act of 1984.

CSSE was organized in 1982 to achieve security for divorced spouses and Federal civil service employees through division of the civil service annuity and automatic survivors benefits. We now have members in 32 States and the District of Columbia. Our median age is 60 and over 98 percent of our group are women. Most of us have been married over 30 years, have raised families and are now working at very low salaries, with no prospect of achieving satisfactory retirement benefits. We are part of the aging population and are now experiencing or anticipating impoverished retirement.

We members of CSSE applaud the efforts of your committee to erase the inequities in the present civil service law pertaining to former spouses. We especially appreciate the Federal health insurance provision. It would provide better coverage at a reasonable rate than divorced spouses now receive after paying an exorbitant premium.

Two members of our group gave me the amounts they are now paying. One of them, if she were in the plan as proposed, would be paying $140 a month. As things stand right now, she pays $328 a month, which she is not going to be able to afford to pay for a long time.

Another member in our group pays $322 a month. Many of the divorced spouses in our group will profit from your bill. They could have had survivorship awarded to them in their settlement but didn't ask for it because they knew it wasn't possible for them to receive it. Others asked for it, but were told the judge couldn't award it.

We are particularly concerned that all spouses who have been awarded survivorship settlement receive it. In response to Mr. Morrison's point that survivorship awards would not be covered by the reduction and retiree's annuity, perhaps the retiree could be asked to pay back a certain portion of that amount to defray the expenses because we feel spouses have designated the survivorship in an honest effort to provide for their spouse when they die.

Women who are married or have been married to Federal civil service employees build no protection for retirement income as

homemakers. They are not entitled to any share of the civil service retirement system annuity earned by the employed spouse unless their spouse dies while still married and still employed.

If the employee retires, he may elect survivor benefits and the amount of these benefits. There is no provision for a divorced spouse unless a share of the annuity is awarded by a court, but this ceases, of course, upon the retiree's death. The civil service retirement system annuity is usually the largest asset owned by a married couple. The average male civil service employee who retired in 1982 will receive $275,000 as an annuity from the CSRS. Yet a widow can be left without a survivor's annuity when the retiree dies, a divorced spouse has no claim on the annuity, and a divorced widow loses her income when the wage-earning spouse, whether employed or retired, dies.

Women who are receiving alimony, or a share of the annuity, under a divorce decree live with the constant fear of what will happen to them when their former husbands die. They express this fear in letters written to us from all over the country.

In my own case, I started working for the Federal Government at age 54 and will receive only $417 per month if I retire at 65. I would have to work until I am 84 to receive an adequate annuity. All this after being married for 35 years; living in public housing for 7 of those years while my husband was in college and graduate school; raising five children and working at temporary positions through the years to augment my husband's income. I am receiving no portion of my husband's retirement annuity and will receive no survivor benefits, even though my husband awarded the survivorship to me in our divorce settlement. This, because of the present inequitable civil service retirement laws.

Older women who divorce and reenter the labor force face formidable obstacles in achieving satisfactory earnings and retirement benefits. Their breaks in service of 10, 20, 30, or more years affect the salaries they can earn. They are low-paid workers, for the most part, because of lack of recent skills and experience and their opportunities for promotion are limited. Assets thay receive as part of their divorce settlement are used to supplement their wages and are exhausted quickly. There is no money left to put into an individual retirement account or other savings.

Divorced spouses of civil service employees cannot look forward to retirement like others their age. They all say that they will work as long as they can but they know that a severe illness or, eventually age, will force them to quit working. When they do retire, the years they spent in homemaking and child-rearing will not count toward their retirement benefits.

The women who are members of CSSE have not been vagrants or slothful. They performed the tasks and fulfilled the role assigned by society and desired by their husbands. Until recently, social mores dictated that a wife and mother remain at home caring for the wage-earner and children. Reliable methods of birth control, such as the oral contraceptives, were not available during their childbearing years and day-care centers did not exist. Even if a woman overcame these hurdles, employers were unwilling to hire married women and mothers. Along with their family responsibilities, they often devoted their energies and abilities to community service.

Spousal individual retirement accounts were not available. There was no way they could provide independently for their retirement income. Their lives were productive and responsible, but they are penalized in their later years for this. This is essentially a problem of the long-term spouse, and I would really like to stress that. It seems to me to be an inhumane way for our Government to treat women who were married to its work force.

The only people we ever hear from as a group are the long-term spouses, spouses who were married for many years—like I said, the average number of years is 30—but we have women married for 35, 40 years and have been divorced.

We are particularly concerned about these older women. There is some creative thought about insuring that these women receive survivor's benefits through Government appropriations. A special class of women would be recognized who were dependent upon their husbands during the marriage and who have limited or no retirement benefits. We also, like I say, want to insure that all court orders are honored. Especially one of our members, now 67, divorced after a 40-year marriage, asked for and received survivorship in the settlement. The husband remarried but died within 1 year. The former spouse received no survivor benefits, of course, but we are not sure that she would receive them under S. 2821 as it is now written.

I would like to thank you for asking me to appear here today, and I hope that you will take our testimony under consideration as you continue to work on this bill. Thank you.

Senator STEVENS. Thank you very much. Your organization has been quite helpful so far. We look forward to working with you on the bill. You raise some interesting questions that are not totally dealt with by our bill.

You are right, that last one probably isn't covered by the bill. It would almost be impossible to do so, but we will see if we can.

Ms. MULLANY. There are not that many. We are dying off fast, and I think a little consideration for some of these—she is on food stamps; she is babysitting today.

Senator STEVENS. It's a closed circle. All the new families will be covered by Social Security and the basic problems will be solved by Social Security in the future. The situation of those individuals who have participated in the civil service retirement system will appear more inequitable when we compare it to the new plan. We are going to try and see if we can cover them. I don't know what you do when the husband has now died and has left a former spouse and a widow and the survivor benefits are already totally dedicated to the widow. I don't think we can change that contract.

Ms. MULLANY. The second wife didn't get anything either. She hadn't been married 1 year.

Senator STEVENS. It is going to be a touchy area. We cannot, by legislation, change the contract with the surviving spouse, I don't believe. But we will do our best and look forward to having your help as we do so. Thank you and your members for their attendance and their help.

Our next witness is Anne Moss, director, Women's Pension Project, Pension Rights Center.

TESTIMONY OF ANNE MOSS, DIRECTOR, WOMEN'S PENSION PROJECT, PENSION RIGHTS CENTER

Ms. Moss. Thank you. I am Anne Moss. I am the director of the Women's Pension Project. Since you have our written testimony, I won't read it. I will just summarize it. We are pleased the subcommittee has taken up the issue of the economic security of spouses and former spouses under Federal civil service, and we think your legislation is very timely, especially considering that Congress is about to take final action on the Retirement Equity Act, a private pension reform measure for women. We would like to see both of these bills enacted in the next few months. We certainly support the provision that would require a spouse's written consent before a retiree assigns away part or all of his survivor's benefits. We think this is a very reasonable provision. It preserves the right of the wife to receive a pension she helped earn.

This same provision is in the Retirement Equity Act. In that bill, it was one of the least controversial provisions.

We also support the provision that will give survivor's benefits to divorced wives. We think it is important that judges have the ability to order the provision of survivor's benefits where necessary. Especially since we already have a law that allows a court to award a share of retirement benefits, it makes sense that the court then be able to award survivor's benefits.

We are greatly in favor of the provision that would allow survivor's benefits to be paid even in the case of remarriage. It is already the case that if a court awards to a former spouse a share of the retirement benefits, she can receive the benefits for life, depending on how the court order is worded.

So it makes sense that she should be able to receive survivor's benefits. We believe the spouse helps earn the benefit and should be able to continue to receive her share for as long as she lives.

We also support the provision that would clarify the law having to do with direct payment of a court-ordered pension share from the Office of Personnel Management. We know that a lot of women with court orders have had trouble collecting their share of retirement benefits, and we think this is an important provision of the bill.

We also support the health insurance provision. We know of so many older women who do have health insurance under the Federal Government plan through conversion. But these women pay a much greater premium and have less coverage, so we think it is very important that they be able to continue as part of the group.

One of the reasons this should not be so costly: If you make it cheaper for more people to participate, then the group will consist of not just those women with chronic illnesses, but a larger group that won't have, on the average, such severe illnesses.

There are a few provisions we would hope you would consider adding to this bill. For example, we would like for you to see to what extent you can provide for women who are already divorced before this bill goes into effect. I know that any time there is pension legislation, it is always a tough problem to figure out how to take care of people who have already lost out. But in this case, the women who may not be taken care of by the legislation are the

ones who have pushed for this legislation. They are the ones who already know the reason for the bill. They include a lot of women who are older, who are elderly, who won't have Social Security, and who are lifetime homemakers.

One other provision we would hope you would at least consider adding has to do with Federal Employees Group Life Insurance.

Senator STEVENS. What if we just make them eligible for Social Security? If they didn't get any benefits from their husband's Federal retirement?

Ms. Moss. The idea being that women who are already divorced have a right to Social Security?

Senator STEVENS. Spousal right to Social Security.

Ms. Moss. For those women who have nothing at all, that would be an improvement. I would have to think about that, what the difference would be in benefits, but that is a possibility.

Senator STEVENS. Let us know what you think. You have got a point, but the real problem is how do you include people who are divorced, husband's deceased or no longer a Federal employee. But with the retirement benefits, it is very complicated. I think the best thing might be to go to the Social Security people and say, why not include these people in the Social Security.

Ms. Moss. Yes. We will work on that.

Finally, one other provision that we would like for you to just think about: We have learned that where a court in a divorce case orders a retiree to make a former spouse or child the irrevocable beneficiary of the Federal employee's group life insurance, apparently the husband does not have to go along with this court order. It is our understanding he can still change the beneficiary at will. A number of women who thought that under the terms of their property settlement or court decree they had life insurance protection discovered that they did not.

We hope you will just give some thought to that.

Since you have my written testimony, that is all I will say now. We do appreciate the fact that you are looking at this legislation, this problem, and we hope that as you think about proposals for the new civil service retirement system, that you also take into consideration the same types of protection for spouses and former spouses. Thank you.

Senator STEVENS. Thank you very much. I have your statement, and we will print it in the record as a whole and look for the Center's assistance as we mark up this bill.

[Ms. Moss' prepared statement follows:]

PENSION RIGHTS CENTER

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STATEMENT
OF
ANNE MOSS, DIRECTOR
WOMEN'S PENSION PROJECT
ON
S.2821 - THE CIVIL SERVICE FORMER SPOUSES BENEFITS ACT OF 1984
BEFORE THE
U.S. SENATE
SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE AND GENERAL SERVICES
AUGUST 1, 1984

Thank you for the chance to testify today. My name is Anne Moss. I am Director of the Women's Pension Project which provides information and assistance to women who are concerned about their income security. The Project is an activitiy of the Pension Rights Center.

We are pleased that this Subcommittee is concerned about the economic security of spouses and former spouses of federal employees. We have heard from many of these women from all over the country who were astonished and outraged to discover that they would not be getting the civil service retirement benefits they had counted on. These women take care of the home with the understanding that all income earned during a marriage is shared family income, including income deferred until retirement. When a husband has spent twenty or thirty

years working for the federal government, his wife, who stayed at home to make it possible for him to earn the pension, has every right to expect the pension to see her through retirement also, whether or not her husband is there with her.

S.2821 would protect homemakers in several ways. We see this bill as an important step toward recognizing that marriage is an economic partnership.

Both the House and Senate have already passed a private pension reform measure for women, the Retirement Equity Act (H.R. 2769/H.R. 4280) which would permit a court to award survivor's benefits to a former spouse and would clarify that a former wife may collect her court-awarded pension share directly from the plan.

> 1. Survivors' benefits for widows. S.2821 would require a spouse's written consent before a federal retiree may give up all or part of the civil service survivor benefits in favor of a larger benefit for his own lifetime.

We find this provision a very reasonable one. It preserves the right of the wife to receive a pension she helped earn. Currently, a retiree is only required to notify a spouse if he signs away her right to survivor's benefits.

While it is important for her to be aware that she will receive no pension if her husband dies first, notification alone is not enough. Certainly it will prevent a wife from being taken by surprise after the death of her husband - the surprise that she won't be getting the survivor's annuity she had counted on. But even if she knows this in advance, what can

she do about it? If she has been a homemaker up to that point, there are not many options for planning retirement finances.

Both versions of the Retirement Equity Act passed by Congress contain requirements that workers under private pension plans obtain their spouses' written consent before giving up survivors' protection. I must say that this was one of the least controversial provisions of the two bills.

> 2. Survivors' benefits for divorced widows. The bill would permit a court to award part or all of the available survivor's benefits to a former spouse or, a couple may agree to the provision of survivor's benefits to the former spouse in a court-awarded settlement.

No matter how generous a court is inclined to be in dividing civil service pension benefits, the court has no power under current federal law to award widow's benefits to a former spouse. Even in an amicable divorce, a husband cannot even voluntarily agree to provide widow's benefits. That is because federal law says that widow's benefits may only be paid to the person married to the federal worker or retiree for the year before his death.

For the first time, survivor's benefits would be available to an ex-wife. Although many divorce suits are settled out of court, we believe it is important to allow judges to order the provision of survivor benefits where necessary. Certainly, it is a logical change to accompany the present law allowing a court-ordered division of retirement benefits.

Until now, women who went through divorce involving private pension benefits faced similar roadblocks because survivor's

benefits were unavailable once the marriage ended. Now, the Retirement Equity Act will permit courts to award widow's benefits to a former spouse.

Remarriage. It is very significant that S.2821 permits survivor's benefits to be paid even if a widow or former wife remarries before the age of 60. We believe that a spouse helps earn the benefit and should continue to receive her share for as long as she lives.

Under current law, remarriage does not affect a former wife's receipt of a share of retirement benefits. We would not think of cutting off the retiree's annuity because he happened to marry again. Once he has earned the pension, his right to receive it is unquestioned. His widow or former wife should have the same right to survivor's benefits. The private pension law follows this reasoning by requiring survivor's benefits to continue regardless of remarriage.

Former wives of employees who die or become disabled before retirement. Generally, S.2821 protects the divorced wife whose former husband dies after retirement. We encourage the Subcommittee to consider similar protections where the former husband dies before retirement.

A federal employee becomes vested after five years. But an employee who works until the early retirement age of 55 or 60 has no means of providing survivor's benefits to a former spouse until retirement. A vested employee who leaves federal

service before retirement age cannot protect a former wife until retirement at age 62. And, it is our impression that anyone receiving a federal disability annuity also would not be able to provide survivor's benefits, even if this bill is passed.

Former spouses of retirees who have already died. We support the S. 2821 provision that gives survivors' benefits automatically to the former wives of certain retirecs who died before the date of enactment. The bill would allow an ex-wife to apply for survivor's benefits as long as she was still married when her former husband retired, as long as he did not remarry, and as long as he did not sign away her right to survivor's benefits at the time of retirement.

We hope the Subcommittee will consider providing some mechanism by which other spouses, already divorced by the time this bill is enacted, could receive survivors' benefits. For example, many ex-wives of federal employees have property settlements that provide for survivors' benefits. Any new legislation for divorced spouses should at least give effect to these settlements. But we urge you to include as many women as possible in provisions for those who are now divorced.

3. Retirement benefits for divorced wives. The bill will make it more likely that the "typical" court order will be sufficient to obtain payment of a pension share directly from the federal government.

There is a definite need for clarification in the law and regulations authorizing direct payment of a court-ordered pension share from the Office of Personnel Management to a former spouse. If a divorce court decides, after considering all the equities involved, that a former spouses is entitled to a pension share, then the federal government should assist her in collecting what she is owed and not set artificial obstacles in her way.

We are also concerned that once a court has awarded a pension share to a former wife, the federal employee could leave government service and withdraw his own retirement contributions. While this would not be very sensible on the employee's part, since he would lose the right to any annuity and forfeit all government contributions and interest, it can happen.

We urge this Subcommittee to protect the former wife who has been awarded a share of the future annuity.

> 4. Health insurance. S. 2821 permits a former spouse to retain the federal health coverage she had while married. She would also have the opportunity to choose a different health benefit plan.

Although former spouses now have the right to be covered after divorce by the same insurer as before the divorce, the coverage may be less and the cost much higher because she is covered as an individual. This means that health insurance premiums for an older divorced woman, especially one with chronic health problems, may cost several thousand dollars a year. She must choose between paying an exorbitant premium that increases annually or having no coverage at all.

* * *

There are some additional protections for former spouses that we would like to see this Subcommittee consider.

Stronger provisions for dividing retirement and survivors' benefits. We hope this Subcommittee will look again at the provision for direct pro rata division of pension benefits that was part of S.1930, the Federal Employees Family Equity Act of 1983, introduced last fall by Sen. Durenberger. While it is essential that courts have the right to divide pensions at divorce, we are concerned that too many judges don't consider the pension at all. Many lawyers don't realize that a pension represents a marital asset.

Dealing with the pension as marital property is a relatively new problem for divorcing couples and the courts. Of course, some states already have well-developed law on the subject. For example, in California, a community property state, courts routinely split pensions. South Carolina will not divide pensions, even when federal law clearly allows it.[1] When state law is clear on pension division, either through statute or case law, and courts apply that law consistently, a federal pension division law should not have any impact on state law. While the majority of states treat pensions as marital property at least some of the time, their policies are not well defined. If a state marital property statute does not mention retirement benefits, then the courts must develop a rule through case law. Even if local law permits pension division, courts must wrestle with the questions: are all pensions divisible? What about a pension that is not yet being paid, or that is not yet vested? How does the court decide how much the pension is worth? How should it be divided and paid out? We have seen that when a court cannot come to grips with these questions, the result is that the former spouse is not provided for.

Even when state law clearly treats pensions as marital property, some lawyers don't always think to bring up the pension issue. For example, though there have been recent cases, both in Maryland and the District of Columbia,[2] that make it clear that pensions are mrrital assets, our organization con-

1. Brown v. Brown 302 S.E. 2d 860 (SC 1983)
2. Barbour V. Barbour, 464 A.2d 915 (Md. 1983); McCree v. McCree, 464 A. 2d 922 (D.C. 1983) - both included civil service pensions.

tinues to receive calls from local women going through divorce who ask, "My lawyer hasn't said anything about asking for part of my husband's pension; what are my rights?"

In Michigan, a judge who presides over 200 divorce judgments a year complains: "In probably half the cases I see, the lawyers don't consider pensions in determining the total assets in marriage. I always ask if this was a consideration, and if not, I tell the lawyers to go back and consider it. The case law in Michigan is clear that all attorneys should consider pensions as part of the assets."[3]

Of course, we would hope that every lawyer knew all the laws relevant to his or her client, and bar associations are trying to educate lawyers about pensions at divorce. But in the meantime, divorced women are losing out. Typically, they have one chance to be awarded a pension share, and that is at the time of divorce. I can't tell you now many letters we receive from women long since divorced, who ask, "No one every said anything about the pension when I was divorced; is it too late for me?" We usually have to tell them, yes, it is too late, because courts are generally reluctant to re-open final decrees.

That is what makes the pro rata provision so necessary. As we understand that provision, a court is free to apply local law on pensions and a couple may negotiate whatever settlement they can. But if the pension issue is not addressed, then a former spouse would have a right to a portion of the civil

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3. Wayne County Circuit Court Judge Marianne O. Battani, as quoted in "Pensions often leave widows out," The Detroit News, May 30, 1984.

service annuity and survivor's benefits.

Life Insurance. Finally, we ask that the Subcommittee add a provision that would permit a court to order the retiree to make a former spouse or child the irrevocable beneficiary of his Federal Employees Group Life Insurance (FEGLI). Even though the court may make such an order or a husband may have such an agreement in a divorce settlement, current regulations appear to permit the husband to change the beneficiary at will:

> A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary, and this right cannot be waived or restricted. 5 CFR §870.901(e)

* * *

At retirement, a pension represents for most women an essential supplement to social security. But today you are looking at a benefit that may be the only retirement income for the wife or former wife of a federal employee. Most of the women who contact my office about civil service pensions are lifetime homemakers who are not prepared to go out into the workforce for the first time and earn their own pensions. For this reason, it is essential that a wife be able to count on sharing in the civil service annuity which she helped earn, even if her husband is not there with her at retirement.

Although new federal workers are covered under social security, current workers and retirees will continue to depend on civil service. Another generation of homemakers will find that widowhood and divorce mean an impoverished old age unless

the law changes. And even though future federal workers will have social security, we know that social security alone will never be enough for a decent retirement.

We urge the Members of this Subcommittee to enact S. 2821 as soon as possible.

Thank you for the chance to appear today.

Senator STEVENS. Our last witness is Robert Beers, congressional liaison officer for the American Foreign Service Association.

TESTIMONY OF ROBERT M. BEERS, CONGRESSIONAL LIAISON OFFICER, AMERICAN FOREIGN SERVICE ASSOCIATION

Mr. BEERS. Thank you, Mr. Chairman. My name is Robert Beers. I appreciate the opportunity of appearing here today on behalf of the American Foreign Service Association. This is the organization which, for the past 60 years, has represented the interests of the men and women of the Foreign Service of the United States. I myself am retired from the Foreign Service.

Mr. Chairman, we wish to address ourselves to section 7 of S. 2821, which relates to Federal health benefits coverage for former spouses. This provision of the bill would permit divorced spouses of civil service employees to continue their enrollment under the Federal Employees' Health Benefits Program following a divorce, assuming that they had been covered under the program up to the date of the divorce.

A divorced spouse electing to continue this coverage would pay the full premiums; the cost would not be shared by the Government.

We appear here today, Mr. Chairman, to urge that the language of this provision in S. 2821 be amended to specifically include the Foreign Service. As you know, the Foreign Service personnel and retirement system is separate from that of the civil service. Its operations are currently carried forward under the authorizations set forth in Public Law 96-465, known as the Foreign Service Act of 1980.

On the contrary, the language of S. 2821 appears to restrict its application only to those persons covered under the civil service retirement system. This may be due to the fact that the other provisions of this bill, apart from the one pertaining to the continuation of coverage under the FEHB program, are not germane to the Foreign Service inasmuch as similar protections relative to retirement and survivor annuities for former Foreign Service spouses have already been enacted in the Foreign Service Act of 1980.

Nevertheless, access to continued FEHB coverage is probably a more significant factor for Foreign Service spouses as a group than for many of their civil service counterparts. The reason for this can be found in the requirements of a Foreign Service career. Foreign Service people serve for extended periods of time abroad and they are subject to periodic reassignment to new duty post locations.

Under those circumstances, it is virtually impossible for Foreign Service spouses to accept private employment which might afford them a separate group health insurance benefit option.

Consequently, the overwhelming majority of Foreign Service spouses must rely on family coverage under the FEHB to meet their personal health insurance requirements.

When there is a divorce, the financial impact resulting from the loss of this coverage can impose severe hardship. Not long ago, we received a letter from a recently divorced Foreign Service spouse which dramatically illustrates this point. She writes in part:

> My check for $447.58 for a quarterly premium ($500 deductible) of the Major Medical Conversion Plan available to former wives of Foreign Service Benefit Plan members was returned to me. The check was sent May 18, 5 days after the end of my coverage under the Foreign Service Benefit plan—the reply dated June 18, 1984.
>
> Instead, the conversion underwriter of Group Premium Administration tells me that I should send in $895.16 for precisely the same coverage. It seems the premiums increased on April 1, a fact that was not mentioned in the literature originally sent to me. But 100 percent?

So a continuation of medical insurance for this former spouse, even with a $500 deductible, will double in cost to between $3,500 to $4,000 a year.

Accordingly, Mr. Chairman, we respectfully urge this committee to amend the language of section 7 of S. 2821 to extend this provision to cover the personnel of the Foreign Service.

In addition, Mr. Chairman, we would also like to propose that this entire provision be made retroactive, so that other former spouses who have not remarried would also become eligible to apply for coverage under the FEHB Program. These changes should not result in any additional costs to the Government and will go a long way toward easing a significant financial hardship which is being incurred by a relatively small number of individuals. Thank you, Mr. Chairman.

Senator STEVENS. Your last request raises an interesting issue. Are you suggesting a retroactive provision only in cases where spouses have not remarried?

Mr. BEERS. This is a limitation I believe could be considered in the sense that if a former spouse remarried, one could assume there would be other arrangements available for adequate group insurance.

Senator STEVENS. That might be an interesting way to handle the problem of retroactivity, to apply it only to where they are not remarried. We will look at that. It is an interesting suggestion. Thank you very much for your testimony.

Mr. BEERS. Thank you, Mr. Chairman.

Senator STEVENS. This concludes our testimony. If there are further comments to be received, we ask they be received within a week. The staff will work with the staff we mentioned and have a draft ready to schedule a meeting of the subcommittee on the 6th, as I indicated, if that date is available.

Thank you all very much.

[Whereupon, at 11:23 a.m., the subcommittee adjourned.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

98TH CONGRESS
2D SESSION

S. 2821

To amend title 5, United States Code, to improve protections for former spouses of Government officers and employees under the Civil Service retirement system and the Federal employees health benefits program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 28 (legislative day, JUNE 25), 1984

Mr. MATHIAS (for himself and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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A BILL

To amend title 5, United States Code, to improve protections for former spouses of Government officers and employees under the Civil Service retirement system and the Federal employees health benefits program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Service Former Spouses Benefits Act of 1984".

SURVIVOR ANNUITIES FOR FORMER SPOUSES: ELECTION

SEC. 2. Section 8339 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(o)(1) For the purposes of this subsection, the term 'former spouse', when used with respect to an employee, Member, or former employee or Member, means any individual who—

"(A) was married to the employee, Member, or former employee or Member for at least one year while the employee, Member, or former employee or Member was subject to this subchapter; or

"(B) was married to the employee, Member, or former employee or Member and is the parent of issue of the employee, Member, or former employee or Member.

"(2)(A) An employee or Member retiring under this subchapter or a former employee or Member entitled to an annuity under this subchapter (including an annuity deferred pursuant to section 8338 of this title) may—

"(i) elect that any portion of the annuity of the employee, Member, or former employee or Member, as computed under subsections (a) through (i) and (n) of this section, be reduced; and

"(ii) designate any former spouse of the employee, Member, or former employee or Member to receive a survivor annuity under section 8341(b) of this title computed based on the amount of the portion of the

annuity that is subject to reduction by reason of the election made under clause (i) of this subparagraph.

"(B) Subject to subparagraph (C) of this paragraph, an election and designation under subparagraph (A) of this paragraph may be made with respect to more than one former spouse of an employee, Member, or former employee or Member.

"(C) The sum of the portions of the annuity of the employee, Member, former employee or Member to which the elections under subparagraph (A) of this paragraph and under subsection (j) of this section apply may not exceed 100 percent of the annuity.

"(D) An employee, Member, or former employee or Member who has made an election and designation under subparagraph (A) of this subsection may modify the election or designation at any time.

"(3) Subject to the limitation set out in section 8341(b)(4) of this title, a court of any State or the District of Columbia may, in a decree of divorce or annulment, or a court order or court-approval of a property settlement agreement incident to a decree of divorce or annulment, require an employee, Member, or former employee or Member to make an election and designation pursuant to paragraph (2) of this subsection. Any such decree, order, or agreement providing that a former spouse of an employee, Member, or former em-

ployee or Member shall be entitled to a survivor annuity under this subchapter based on the service of the employee, Member, or former employee or Member shall be considered to require an election and designation pursuant to such paragraph. Such an election and designation shall be deemed to have been made upon receipt of a copy of such decree, order, or agreement (and such further documentation as the Office of Personnel Management may require) by the Office.

"(4) An election under paragraph (2) of this subsection shall be made in writing in such form and manner as the Office of Personnel Management may direct and shall be transmitted to the Office.

"(5)(A) An election under paragraph (2) of this subsection shall not be considered valid in the case of an employee, Member, or former employee or Member who, on the date the election is made—

"(i) is married and has been married to his spouse for at least one year; and

"(ii) is not required by a court to make the election pursuant to paragraph (3) of this subsection,

unless the election includes, in such form and manner as the Office directs, a written consent of the spouse satisfying the requirements of subparagraph (B) of this paragraph.

"(B) A written consent of the spouse of an employee, Member, or former employee or Member making an election

under paragraph (2) of this subsection satisfies the requirements of this subparagraph if the consent—

"(i) includes statements that the spouse consents to the election and understands that, by reason of the election, the spouse will not be entitled to receive a survivor annuity under section 8341(b) of this title based on the service of the employee, Member, or former employee or Member or will receive only a reduced survivor annuity under such section based on such service, as the case may be; and

"(ii) is signed and acknowledged by the spouse before a notary public by the spouse.

"(6) The annuity computed under subsections (a) through (i) and (n) of this section for an employee, Member, or former employee or Member making an election under paragraph (2) of this section shall be reduced by an amount computed in the same manner as provided in the first sentence of subsection (j)(1) of this section.".

SURVIVOR ANNUITIES FOR FORMER SPOUSES:

ENTITLEMENT

SEC. 3. (a) Paragraph (1) of section 8341(b) of such title is amended—

(1) by inserting "(A)" after "(1)"; and

(2) by adding at the end thereof the following new subparagraph (B):

"(B) If a retired employee or Member dies survived by a former spouse designated by the retired employee or Member in an election made under section 8339(o)(2) of this title to receive a survivor annuity under this subsection, the surviving former spouse is entitled to an annuity equal to 55 percent of (i) the amount of the annuity of the retired employee or Member computed under subsections (a) through (i) and (n) of section 8339 of this title, or (ii) such portion of the amount of such annuity as is specified in the election.".

(b) Section 8341(b)(3) of such title is amended to read as follows:

"(3) A surviving spouse of a deceased retired employee or Member who became the spouse of such retired employee or Member after the employee's or Member's retirement is entitled to a survivor annuity under this subsection only upon electing the survivor annuity instead of any other survivor benefit to which the spouse may be entitled under this subchapter or another retirement system for Government employees. The survivor annuity of a spouse, widow, widower, or former spouse under this subsection commences on the day after the annuitant dies. The survivor annuity and the right to the survivor annuity terminate on the last day of the last month before the spouse, widow, widower, or former spouse dies.".

(c) Subsection (b) of section 8341 of such title is further amended by adding at the end thereof the following new paragraph:

"(4) The total amount of the survivor annuities payable under this subsection with respect to a deceased employee, Member, or former employee or Member may not exceed an amount equal to 55 percent of the annuity computed under subsections (a) through (i) and (n) of section 8339 of this title as may apply with respect to such employee, Member, or former employee or Member. The order of precedence of an entitlement of a spouse, widow, widower, or former spouse to a survivor annuity under this subsection shall be based on the order in which the Office of Personnel Management receives notice of a valid election, designation, or other qualifying action made by an employee, Member, or former employee or Member, under subsection (j) or (o) of such section.".

OTHER AMENDMENTS RELATING TO SURVIVOR ANNUITY ELECTIONS

SEC. 4. (a)(1) The first sentence of subsection (j)(1) of section 8339 of title 5, United States Code, is amended by striking out "(o)" and inserting in lieu thereof "(n)".

(2) Subsection (j)(2) of such section is amended to read as follows:

"(2)(A) Any written notification or designation made under the first sentence of paragraph (1) by an employee or Member who, on the date of retirement, has been married to

his spouse for at least one year shall not be considered valid unless the notification or designation includes, in such form and manner as the Office directs, a written consent of the spouse satisfying the requirements of subparagraph (B) of this paragraph.

"(B) A written consent of the spouse of an employee or Member making a notification or designation referred to in subparagraph (A) of this paragraph satisfies the requirements of this subparagraph if the consent—

"(i) includes statements that the spouse concurs in the employee's or Member's desire expressed in the notification or concurs in the employee's or Member's designation, as the case may be, and that the spouse understands that, by reason of the notification or designation, the spouse will not be entitled to receive a survivor annuity under section 8341(b) of this title based on the service of the employee or Member or will be entitled to receive only a reduced survivor annuity under such section based on such service, as the case may be; and

"(ii) is signed and acknowledged by the spouse before a notary public.".

(b) Subsection (k) of such section is amended by adding at the end thereof the following new paragraph (3):

"(3) Any reduction in annuity and any entitlement to a survivor annuity resulting from an election made under paragraph (1) shall be void or limited prospectively to the extent necessary to give effect to any valid election made under subsection (o)(2) of this section.".

SURVIVOR ANNUITY FOR FORMER SPOUSES OF CERTAIN ANNUITANTS WHO DIED BEFORE DATE OF ENACTMENT

SEC. 5. (a) For the purposes of this section—

(1) the term "employee" shall have the same meaning as provided in section 8331(1) of title 5, United States Code;

(2) the term "Member" shall have the same meaning as provided in section 8331(2) of such title;

(3) the term "service" shall have the same meaning as provided in section 8331(12) of such title;

(4) the term "widow" shall have the same meaning as provided in section 8341(a)(1) of such title; and

(5) the term "widower" shall have the same meaning as provided in section 8341(a)(2) of such title.

(b)(1) Notwithstanding any other provision of law, except as provided in paragraph (2), if—

(A) a retired employee or Member was married on the date of retirement under the provisions of subchapter III of chapter 83 of title 5, United States Code (or any similar prior provisions of law),

(B) the retired employee or Member was later divorced from the individual to whom the retired employee or Member was married on such date,

(C) the retired employee or Member died without remarrying before the date of enactment of this Act, and

(D) the former spouse to whom the retired employee or Member was married on the date of retirement is living on the date of enactment of this Act,

such surviving former spouse is entitled, upon application to the Office of Personnel Management, to a survivor annuity under section 8341(b)(1) of such title. The entitlement shall take effect on the first day of the first month beginning not less than 30 days after the date the Office receives such application in such form and manner and with such documentation as the Office may require. The amount of the survivor annuity shall be equal to the amount the surviving former spouse would have been entitled to receive under such section 8341(b)(1) if the former spouse had remained married to the retired employee or Member, taking into account any designation validly made by the retired employee or Member with respect to such former spouse under the first sentence of section 8339(j)(1) of such title (or any similar prior provision of law).

(2) Paragraph (1) shall not apply in the case of a retired employee or Member who—

(A) notified the Office of Personnel Management in writing at the time of retirement under such subchapter that the employee or Member did not desire any spouse surviving him to receive a survivor annuity, as provided in the first sentence of section 8339(j)(1) of such title (or any similar prior provision of law); or

(B) the retired employee or Member is survived by a widow or widower who—

(i) married the retired employee or Member after the employee's or Member's retirement under subchapter III of chapter 83 of such title; and

(ii) is entitled to an annuity under such section 8341(b) based on the service of the retired employee or Member.

ENFORCEMENT OF COURT DIVISION OF ANNUITY ENTITLEMENT

SEC. 6. Section 8345(j)(1) of title 5, United States Code, is amended to read as follows:

"(j)(1) If an employee, Member, or annuitant is obligated by the terms of any decree of divorce, annulment, or legal separation or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation to pay

periodically to any other person any portion of the amounts the employee, Member, or annuitant is entitled to receive under this subchapter based on the employee's, Member's, or annuitant's service, the Office of Personnel Management shall deduct and withhold the amount equal to such portion from the amounts payable to the employee, Member, or annuitant under this subchapter for the applicable periods and pay each amount deducted and withheld to such other person at the place, if any, provided in such decree, order, or agreement. Any payment made to a person under this paragraph bars recovery by any other person.".

FEDERAL EMPLOYEE HEALTH BENEFITS FOR FORMER SPOUSES

SEC. 7. (a)(1) Section 8901 of title 5, United States Code, is amended—

(A) by striking out "and" at the end of paragraph (8);

(B) by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and "and"; and

(C) by adding at the end thereof the following new paragraph:

"(10) 'former spouse' shall have the same meaning as provided in section 8339(o)(1) of this title.".

(2) Section 8902 of such title is amended—

(A) in subsection (g), by inserting "or former spouse of an employee or annuitant" after "employee or annuitant" each place if occurs;

(B) in subsection (j), by striking out "or family member" and inserting in lieu thereof "family member, or former spouse of an employee or annuitant"; and

(C) in the first sentence of subsection (k), by striking out "or family member" and inserting in lieu thereof "family member, or former spouse of an employee or annuitant".

(3) Section 8903 of such title is amended—

(A) in paragraph (1)—

(i) by inserting "or former spouses of employees or annuitants" after "families,"; and

(ii) by inserting "or former spouse of an employee or annuitant" before the period; and

(B) in paragraph (3), by inserting "(including former spouses of employees or annuitants)" after "individuals".

(4) Section 8905 of such title is amended by adding at the end thereof the following new subsection:

"(f) A former spouse of an employee or annuitant who was enrolled in a health benefits plan under this chapter as a member of family of the employee or annuitant immediately

before the marriage to the employee or annuitant was dissolved may—

"(1) enroll in an approved health benefits plan described by section 8903 of this title as an individual; and

"(2) transfer enrollment from a health benefits plan described by such section to another plan described by such section at the same times and under the same conditions as are prescribed by the Office for employees and annuitants under subsection (e) of this section.".

(5) Section 8906 of such title is amended by adding at the end thereof the following new subsection:

"(i) Under such regulations as the Office shall prescribe, each former spouse (of an employee or annuitant) enrolled in a health benefits plan under this chapter shall contribute the full subscription price for the enrollment.".

(6) Section 8907(a) of such title is amended by inserting "and former spouse of an employee or annuitant" after "employee" each place it occurs.

(7) Section 8909 of such title is amended—

(A) in the second sentence of subsection (a), by inserting "former spouses of employees or annuitants," after "annuitants,"; and

(B) in the second sentence of subsection (d), by inserting "or former spouse of an employee or annuitant".

(b) Not later than 90 days after the date of the enactment of this Act, the Office of Personnel Management shall—

(1) take such action as is necessary with respect to contracts entered into and health benefits plans approved under the provisions of chapter 89 of such title to carry out the amendments made by subsection (a);

(2) publicize the amendments made by subsection (a) in the manner most likely to notify the former spouses of officers and employees of the Government regarding the rights and benefits resulting from such amendments; and

(3) carry out a program of open enrollment for former spouses entitled to enroll in a health benefits plan under the provisions of such chapter.

TECHNICAL AMENDMENTS

SEC. 8. (a) Section 8339 of title 5, United States Code, is amended—

(1) in subsection (l), by striking out "(o)" and inserting in lieu thereof "(n)"; and

(2) in subsection (m), by striking out "(o)" and inserting in lieu thereof "(n)".

(b) Section 8341 of such title is amended—

(1) in subsection (b)(1), by striking out "(o)" and inserting in lieu thereof "(n)"; and

(2) in the first sentence of subsection (d), by striking out "(o)" and inserting in lieu thereof "(n)".

EFFECTIVE DATES

SEC. 9. (a) Except as provided in subsection (b), the amendments made by this Act shall take effect with respect to any divorce or annulment taking effect before, on, or after the date of enactment of this Act.

(b) Section 8339(o)(3) of title 5, United States Code (as added by section 2), shall apply to any divorce or annulment taking effect after the date of enactment of this Act.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
Affiliated with AFL-CIO
1325 Massachusetts Avenue, N.W., Washington, D. C. 20005

STATEMENT

OF

KENNETH T. BLAYLOCK

NATIONAL PRESIDENT

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, (AFL-CIO)

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE & GENERAL SERVICES

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

ON

S.2821, CIVIL SERVICE FORMER SPOUSES BENEFITS ACT OF 1984

AUGUST 1, 1984

The American Federation of Government Employees (AFL-CIO), which represents 700,000 Federal employees nationwide, is pleased to have this opportunity to submit this statement to the Subcommittee on Civil Service, Post Office & General Services, of the Senate Governmental Affairs, on S.2821, "The Civil Service Former Spouses Benefits Act of 1984."

We would like to congratulate Senator Stevens, Chairman of this Subcommittee and his colleague Senator Mathias for their introduction of this important legislation.

We all know of the horror stories of an individual (often female) who supported their spouse through college, raised their family, provided a home and then was cut off in a divorce case or at the time of their spouse's death with little or no means of providing for their elderly years. In many of these instances, the spouse will not qualify for Social Security benefits (this is especially relevant for spouses of Federal employees). AFGE,and we are certain most Federal employees, believe that effective Federal legislation in this area is needed.

With this reasoning and with this clear, demostratable need, AFGE supports the passage of S.2821, "The Civil Service

Former Spouses Benefits Act of 1984."

S.2821, has three central themes. First, the bill would convert the property interest in a spousal survivor annuity to community property, subject to the powers of award by a divorce court. (Under present law, the sole right to a survivor annuity is to a current spouse.) This provision is prospective.

Second, the bill would require the joint consent of the employee and the spouse if survivor benefits are to be waived or reduced. (Under current law the employee can waive the survivor annuity with the requirement that the spouse be notified of such a waiver.)

Third, it would allow a former spouse to participate in the Federal Employee Health Benefits Program.

AFGE supports all three of these major provisions.

We also support the non-punitive approach of the retroactive provisions of the bill. By permitting a Federal employee to voluntarily elect to provide survivor benefits (with the concurrence of a current spouse in the relevant cases), some of the problems in the existing former spouse population will be addressed. The entitlement of certain former spouses to

survivor benefits in some cases where a retired employee dies will addess others in the existing former spouse population. AFGE would support measures which would expand these efforts to others in the existing former spouse population, as long as, such measures do not penalize current employees and retirees and their current spouses.

AFGE would like to note a possible situation in the joint waiver provision which does not seem to be covered by the existing legislation -- that is the case of the long-estranged spouse. In some cases either through personal perference or religious conviction a couple may separate without legally dissolving the marriage through divorce. In this situation, the employee may have lost all contact with his estranged spouse and may not be able to execute the joint waiver even though it would be appropriate for both parties. We would suggest that a "good faith" effort escape clause be provided for this exceptional case.

Finally, we look forward to working with the Chairman and this Subcommittee for passage of this important legislation.

American Postal Workers Union, AFL-CIO
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July 27, 1984

Honorable Ted Stevens
Chairman
Subcommittee on Civil Service Post
Office and General Services
Hart Senate Office Building
Room 601
Washington, D.C. 20510

Dear Ted:

I appreciated receiving your invitation of July 13, 1984 to testify in regard to S. 2821, the Civil Service Former Spouse Benefits Act of 1984.

The issues addressed by this bill are of great interest to the 320,000 members of the American Postal Workers Union. Since I will be unable to appear at the hearing I have set forth APWU's position on S. 2821 in this letter, and I request that these comments be made a part of the hearing record.

The Civil Service Former Spouse Benefits Act of 1984 deals with several survivor benefit issues that have become a major concern in both the Civil Service Retirement system and private-sector pension plans. In areas as complex as pension legislation and family relationships, it is of utmost importance that the Subcommittee move carefully and avoid creating any new inequities as it seeks to correct current problems.

S. 2821 would improve spousal benefit rights in several ways. First, the bill would strengthen the voice of an employee's spouse in making the decisions on election of a survivor's benefit and on the size of that benefit. This change should lead federal and postal employees to plan their retirements more carefully and result in better income protection for the workers' families.

S. 2821 would also authorize survivor benefit rights to divorced spouses through voluntary agreements and court decrees. We are all aware of the hardships and inequities that have resulted for some divorced spouses in the past due to the lack of statutory guarantees to survivor benefits. This situation has been especially harmful for non-working spouses who divorced after long marriages.

The bill deals with the financial impact of this liberalization by applying the existing cap on a survivor's benefit to the total benefits available to all of a retiree's spouses, both present and former. Maintaining this cap of 55 percent of the retirement annuity will ensure that any cost due to this change in law will be minimal.

The bill provides benefit rights in the special case of a spouse who was divorced after the retirement of the employee but before the employee's death. This group of people has been particularly vulnerable to impoverishment in old age.

S. 2821 would permit former spouses to maintain health insurance coverage under a Federal Employee Health Benefits Plan by paying the full subscription cost for such coverage. This provision will resolve a major problem for former spouses who had relied on the health plan of a federal or postal worker.

The complex family and legal relationships the bill deals with are such that it is very important to move cautiously and resolve the techincal problems before these changes become the law of the land. I have two recommendations in that regard.

The first recommendation is to limit the applicability of court-ordered benefits for divorced spouses to those whose marriages lasted at least ten years. A duration requirement would eliminate the potential for a large number of frivolous court actions and would be in keeping with the social policy developed under Social Security, which has a ten-year duration requirement. Such a requirement would also offer some protection for the survivor benefit rights of second and subsequent spouses. As now drafted, the bill sets no limitation on a court's awarding of benefit rights to an employee's first spouse. This situation could lead to first spouses unfairly getting all or most of the survivor benefits without regard to the time spent in the marriage or the portion of the employee's career the marriage overlapped. A ten-year marriage duration requirement would limit the possibilities for such abuses occurring.

A second suggestion is to deal with the problem of estranged spouses who have not divorced. As the bill now stands, an estranged spouse could exercise control over an employee's election of survivor benefits. This situation can be avoided by requiring that a spouse who has not lived with the retiring employee recently must show evidence of shared economic arrangements with the employee, such as a joint tax return, in order to have the rights this bill gives current spouses in election of benefits.

We are pleased to see that S. 2821 grants benefit entitlement in pre-existing divorces only where there is a voluntary agreement between the divorced spouses that survivor benefit rights should be extended. It would be unfair to threaten the financial well-being of retirees and their current spouses by letting the courts re-open past divorce settlements.

S. 2821 addresses serious inequities in the current Civil Service Retirement System. I urge you to adopt the recommendations I have made in order to avoid creating other inequities.

Again, as always, I appreciate this opportunity to share with you APWU's concerns on legislation affecting postal workers.

Sincerely,

Moe Biller

Moe Biller
President

STATEMENT BY
VINCENT R. SOMBROTTO, CHAIRMAN
FUND FOR ASSURING AN INDEPENDENT RETIREMENT

Mr. Chairman: On behalf of the 25 organizations that comprise the Fund for Assuring an Independent Retirement (FAIR), we appreciate this opportunity to present our views on S. 2821, The Civil Service Former Spouses Benefit Act of 1984.

We applaud the efforts of this Subcommittee in addressing the issue of pension equity. We recognize the very real problems that this proposed legislation seeks to remedy and we are prepared to work with this Subcommittee to find solutions that are both effective and equitable.

Equitable pension policy which neither intentionally nor effectively disenfranchises groups of individuals from their pension rights is both laudable and attainable. We note with pride that the Civil Service Retirement System, the largest retirement system in the nation, has historically been truly gender neutral. Specifically, many of the barriers to vesting and collecting pensions that have traditionally precluded women from fully participating in private sector plans, and which were in fact the primary motivators for recent action on the Women's Pension Equity Act, do not exist in the Federal Retirement System.

We also commend this Subcommittee for taking this equity issue one step further by allowing a divorced spouse to continue coverage under the Federal Employee Health Benefits program. Terminating a marriage does not mean terminating the need for adequate and affordable health care. Obtaining insurance in the private sector is expensive and confusing. There are cases where divorced spouses can neither obtain nor afford health care insurance from private companies. This bill alleviates that potential problem and burden.

In today's society, marriage is more than a personal relationship -- it is an economic partnership. It is essential that all parties participate in the division of property rights including those under the Civil Service Retirement System. While we agree with the intent and goal of the joint waiver clause, we have several reservations about its possible ramifications. Although the bill seeks to protect financially destitute spouses who have been abandoned by the wage earner, it creates a burden on a Civil Service employee who has been abandoned by a spouse.

By providing virtual veto power, the joint waiver provision grants survivor benefits to a spouse even if they deserted the wage earner many years previous or have been guilty of a fault ground leading to a divorce. Because of this veto power over the non-selection of survivor benefits, complications could arise for an employee who does not share a common household with his/her spouse. For example, two individuals may live separately but not obtained a legal divorce due to philosophical or religious reasons. Under the joint waiver provisions, the employee must still obtain the waiver of the spouse or the annuity will be reduced.

We suggest the Committee establish certain guidelines possibly in report language that the Office of Personnel Management can use for guidance in establishing certain exceptions to the joint waiver requirement.

Consistent with our support for encouraging the election of survivor benefits, we would like to bring a significant related issue to the Subcommittee's attention. As the Chair knows, retirees are provided a one-time opportunity to select survivor benefits upon retirement. Until recently, spouses were not notified of the retiring workers' choice. Often retiring workers themselves were not fully aware of the importance and finality of this one-time opportunity.

Retiring workers who elected not to provide survivor benefits were surprised to find themselves precluded from providing for partners they married after the death of their first spouse. Confusion has even reigned where retiring workers who elected survivor benefits have been predeceased by their spouse and have subsequently remarried. In this case, remarriages must exist for at least one year before a new spouse is eligible for survivor benefits. However, application for that benefit must occur before the first anniversary of the remarriage.

These and other problems have created a time bomb which will leave future widows and widowers unintentionally disenfranchised even though their spouses would welcome an opportunity to provide for them. Legislation has been introduced to provide a second election opportunity. As we attempt to address the difficult issues created by contested rights for survivor benefits, surely we should work to allow individuals, who are willing to accept a reduced annuity, a second opportunity to provide survivor benefit protection for their current spouse.

In fact, if this bill passes as presently drafted, it will discriminate against this particular group. We note S. 2821 allows for the voluntary second election for survivor benefits by individuals who have become divorced but not for individuals who are married. By not granting married individuals this opportunity, you are giving them only one avenue to provide these needed benefits -- divorce. We hope the Subcommittee will seek to correct this present inequity.

Mr. Chairman, we have appreciated this opportunity to present our views and would be happy to make ourselves available to the Subcommittee to assist in answering any questions which might arise.

FUND FOR ASSURING AN INDEPENDENT RETIREMENT

American Federation of Government Employees
American Foreign Service Association
American Postal Workers Union
Epsilon Sigma Phi
Federal Executive and Professional Association
Federally Employed Women
Graphic Communications International Union
International Federation Professional & Technical Engineers
International Union of Operating Engineers
Military Sea Transport Union
National Association of Air Traffic Specialists
National Association of ASCS County Office Employees
National Association of Federal Veterinarians
National Association of Letter Carriers
National Association of Postal Supervisors
National Association Postmasters of United States
National Association of Retired Federal Employees
National Federation of Federal Employees
National Labor Relations Board Union
National League of Postmasters
National Rural Letter Carriers Association
National Treasury Employees Union
Organization of Professional Employees of Department of Agriculture
Service Employees International Union
United States Traffic Controllers Organization

Tony R. Huerta
Executive Vice President
Francis J. Conners
Vice President
Richard P. O'Connell
Secretary-Treasurer
Halline Overby
Asst. Secretary-Treasurer
Joseph H. Johnson, Jr.
Director of City Delivery
William M. Dunn, Jr.
Director, Life Insurance

National Association OF LETTER CARRIERS
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Director of Retired Members
BOARD OF TRUSTEES
George Davis, Jr.
James G. Souza, Jr.
James Worsham

STATEMENT OF

VINCENT R. SOMBROTTO, PRESIDENT

NATIONAL ASSOCIATION OF LETTER CARRIERS

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE AND GENERAL SERVICES

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

August 1, 1984

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AFFILIATED WITH | *AMERICAN FEDERATION OF LABOR—CONGRESS OF INDUSTRIAL ORGANIZATIONS*
POSTAL TELEPHONE TELEGRAPH INTERNATIONAL

Mr. Chairman, I appreciate this opportunity to express the views of the National Association of Letter Carriers on S. 2821, "The Civil Service Former Spouses Benefit Act of 1984."

We agree with the Chairman and support your efforts to insure that retirement laws are amended to provide economic security for all Civil Service employee spouses. However, we view this issue as being extremely complex and requiring full consideration before enacting changes affecting retirement rights of both the federal employee and the spouse. The NALC is committed to enacting legislation that is fair to both and creates no hardship on either. In no way do we want to delay action on this most important pension equity issue; on the other hand, we do not want to create new inequities and administrative nightmares that harm rather than help postal/federal employees and their spouses. We want to work with this Subcommittee as S. 2821 is considered.

First, we commend the sponsors of the bill for including a provision to allow divorced spouses of federal workers to continue the federal employee health insurance coverage under the employee's health benefit plan, providing the spouse pays 100 percent of the premium cost. This will ensure spouses have and are able to obtain health care insurance at reasonable rates. We recommend that this provision expire at the time the spouse remarries.

Second, we agree with the joint waiver requirement that a Civil Service retiree provide survivor benefits for a spouse or divorced spouse prospectively unless the spouse or former spouse

agrees to a waiver of the survivor benefits. However, we believe that certain precautions must be provided to protect the pension rights of the employees. For example, would this requirement apply in cases where the man and wife were separated for a long time period, but did not get a divorce for legal, personal or religious reasons? Would the joint waiver provisions affect employees whose spouse simply abandoned the home, only to return years later at the time of the federal employee's retirement to claim a survivor benefit? Should fault in a divorce case negate the joint waiver requirement, such as rape, violence, imprisonment, insanity, etc.? These are all legitimate questions that could be harmful to federal employees, who, through no fault of their own, must provide a survivor benefit at great cost to them. In July, 1984, letter carriers retiring after 30 years and providing a survivor's annuity will have their $1,025.33 monthly annuity reduced by $80.09, or by almost 8 percent. On top of this, the annuity is reduced by $99.20 to cover the employee's health benefit plan. Thus, the monthly annuity is reduced to $846.04, all of which is subject to federal income taxes. Therefore, you can see the survivor benefit is a substantial cost item to the retiring federal employee.

We would like to make two recommendations in the bill that would be beneficial to retirees and their spouses. First, retiring employees who do not provide survivor benefits at the time of retirement find themselves precluded from providing for a second spouse after the death of the first spouse. And retiring workers who elected survivor benefits, but the spouse predeceased them have a small window period in which to elect survivor benefits for a

second spouse. It requires they be married for one year and that the second selection occur before the first anniversary of the second marriage. In both cases, there should be more flexibility and a larger window for election of survivor benefits.

Second, there is a group of Civil Service employee spouses who are without any income as a result of the non-selection of the survivor benefit. This is the situation where an employee did not elect a spouse survivor annuity and died shortly after retirement, thus leaving the spouse without any retirement income. There would appear to be a small group of such spouses who are entitled to some form of relief by the government. The form of relief might be to provide for such a spouse, a survivor annuity through a Congressional appropriation.

Under such a proposal, Congress would authorize annual appropriations on a continuing basis of a sum equal to the amount necessary to provide these spousal benefits. The annual appropriations would decline, as the group would never be larger than its intitial size. The Office of Personnel Management would be responsible to submit an annual report to Congress, with recommendations on the amount of appropriations necessary to fund the spousal benefit. OPM would be responsible for identifying and certifying those eligible, applying guidelines established by Congress.

The NALC will make itself available to the Chairman and Subcommittee Members to work on this bill to ensure all affected

parties are treated fairly and protected. We look forward to working with you, Mr. Chairman, on spouse retirement equity legislation.

38-162 130

WEAL
Women's Equity Action League

Specialists in Women's Economic Issues

STATEMENT

OF THE

WOMEN'S EQUITY ACTION LEAGUE

ON

S. 2821 - THE CIVIL SERVICE FORMER SPOUSES ACT BENEFITS OF 1984

TO THE

U.S. SENATE

SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE AND GENERAL SERVICES

AUGUST 2, 1984

805 15th Street NW Suite 822 Washington DC 20005 (202) 638-1961

Chairman Stevens and Members of the Subcommittee, the Women's Equity Action League (WEAL) is pleased to offer this statement on the pension and retirement needs of widows and former spouses of civil service personnel.

Founded in 1968, WEAL is a national organization specializing in women's economic issues. WEAL's commitment to economic equity has resulted in our special interest in the issue of retirement income for all women including civil service wives, former wives and widows.

Provisions must be made for widows and for divorced spouses of lengthy marriages, many of whom are now in desperate situations. The civil servant retires with a "guaranteed lifetime income." This security is "shared" as long as the marriage lasts but in event of divorce, the woman who has dedicated years to homemaking finds herself literally bankrupt when she learns that her years as a civil service homemaker are not worth a penny! Yet marriage is an economic partnership. Both members contribute to the family unit and both receive benefits. Unfortunately, these partnerships do not last forever: some are terminated by divorce or the death of a partner. Women are most often the survivors: the average widow who does not remarry and dies a natural death will live about 18 years as a widow. At the same time the divorce rate in America is approaching 50%, and more lengthy marriages are being terminated. Widowhood and divorces late in life often are synonymous with poverty.

Twenty-seven percent of all elderly divorced women live in poverty; for black women this figure is over 42 percent. Sixty-six percent of the 2.7 million elderly women living in poverty were widows. Widowed elderly women have a poverty rate of 23 percent. For blacks the rate soars to almost 50 percent. It is not surprising then that women are almost three-fourths of all people who receive Supplemental Security Income (SSI) on the basis of age. SSI is a form of public assistance for the poorest elderly and disabled people in America.

Helping women to receive a share of their husbands' pension benefits could reduce the poverty of elderly women, which now stands at a rate of nearly 18 percent. Steps have already been taken in the private pension arena to recognize the contribution of the homemaker to a worker's pension by establishing automatic survivor benefits unless both spouses waive them in writing.

Also, wives of employees of the Foreign Service, the Central Intelligence Agency, and the Uniformed Services have been recognized as members of an economic partnership regarding pension rights. Civil service wives, however, remain in a situation which provides them little or no retirement protection in the event of divorce or the death of their husbands.

While it is true that spouses of civil service personnel hired on or after January 1, 1984 will be eligible for benefits under Social Security, this

will not help spouses of current federal workers and retirees, who have no Social Security coverage. For these spouses a share in the federal pension may be the only retirement income the civil service wife can hope for. It is also important to remember that while in the future Social Security will be available to spouses of federal workers, Social Security will be available to spouses of federal workers, Social Security rarely provides adequate retirement income for a spouse. This is because the benefit may be only a portion of the worker's benefit or is greatly reduced if taken at the earliest age allowed.

S. 2821 would make much needed changes in the survivor's benefit plan for spouses and former spouses of civil service personnel. It would make it possible for the wife -- who had assumed a supportive role in helping her husband accrue a pension -- to share in that pension at a time she needs it most, when she is alone.

TREATMENT OF WIDOWS

S. 2821 would make survivor benefits mandatory unless the employee's spouse agrees in writing to waive the survivor annuity. WEAL believes this change to be absolutely essential: it gives the person most directly affected -- the survivor -- a role in the economic decision making. Under current law, the federal employee can sign away his wife's right to survivor benefits. He is required only to notify her of his decision. Even advance notice rarely provides enough time for her to secure employment and earn a pension

or Social Security benefits in her own right.

TREATMENT OF DIVORCED WIDOWS

S. 2821 would allow former spouses of civil service personnel to receive survivor benefits subject to court review. Under current law the court has no power to award survivor benefits to a former spouse. Even a federal retiree who wishes to provide survivor benefits to his divorced wife cannot do so.

S.2821 would permit an employee or retiree voluntarily to provide a survivor annuity to any former spouse and, in addition, would permit the court to order payment of survivor benefits to a former spouse. The latter provision would complement Public Law 95-366, enacted in 1978, which permits direct payment of retirement benefits to a divorced spouse in accordance with the terms of a civil order or property settlement.

WEAL also supports the retroactive provisions of S. 2821 which address divorces that occurred before the bill's enactment. Under these provisions, an already divorced civil service employee could voluntarily assign survivor benefits to a former spouse. In addition, S. 2821 would provide survivor benefits for a former spouse of a retiree who died before the date of enactment if the former spouse was married to the retiree at the time of retirement, and if the retiree had not waived the survivor annuity, and the retiree had not remarried. These retroactive provisions would help women who would otherwise "fall through the cracks" and find themselves in

dire financial straits late in life.

Unfortunately, one group of spouses whose concerns are not completely addressed by S. 2821 are those already divorced by the time this bill is enacted. For example, the Office of Personnel Management (OPM) should be required to honor court orders already issued that provide survivor benefits to a former spouse.

Regarding remarriage, WEAL supports the provision in S. 2821 which, in effect, views a first marriage as an economic partnership even if the widow or former wife of a civil service employee enters into a second marriage before age 60. The civil service survivor benefit should be considered to be marital property -- not alimony -- and therefore should not be terminated upon remarriage.

TREATMENT OF DIVORCED WIVES

WEAL supports S. 2821's provision that clarifies the role of the Office of Personnel Management in facilitating direct payment of retirement benefits for divorced wives who have a court order awarding them such benefits. We also urge the subcommittee to reconsider a provision which was part of the Federal Employee Family Equity Act (S. 1930), introduced last fall by Senator Durenberger. This provision would allow for direct pro-rata division of pension benefits.

Direct pro-rata division would assure that a former spouse would have a right to a portion of the civil service annuity and survivor benefits, even if she lost the opportunity to receive that benefit at the time of divorce. (This could have happened because the issue of pension rights had never been addressed in court or for a variety of other reasons.)

HEALTH INSURANCE

WEAL supports S. 2821's provison to extend federal employee health insurance to divorced spouses, providing them the same type of coverage they had during the marriage. Thus older divorced spouses could continue to be covered as a member of a group instead of as an individual, an option which is often prohibitively expensive. Divorced spouses, especially those who are not in good health, often cannot afford individual rates and are forced to go without health insurance coverage.

LIFE INSURANCE

WEAL is concerned that S. 2821 does not address this important issue. We urge the subcommittee to add a provision that would allow a court to order the civil service retiree to make a former spouse or child the irrevocable beneficiary of the Federal Employee Group Life Insurance (FEGLI). Current regulations permit the retiree to unilaterally change the beneficiary at any time -- without even notifying the beneficiary -- even when that beneficiary has already been named in a court order or a divorce agreement.

WEAL would like to thank the Chair and the Subcommittee for the opportunity to submit this statement for the record. We hope our remarks will help insure the passage of S. 2821, which speaks to the pension rights of former spouses and widows of civil service employees.

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